

00-415-CD
ALLSTATE INSURANCE COMPANY as Subrogee to vs GENERAL MOTORS
KEVIN B. TICE
CORPORATION

Date: 08/08/2002

Time: 12:00 PM

Page 1 of 1

Clearfield County Court of Common Pleas

User: BANDERSON

ROA Report

Case: 2000-00415-CD

Current Judge: Fredric J. Ammerman

Allstate Insurance Company, Kevin B. Tice vs. General Motors Corporation

Civil Other

Date	Judge
04/06/2000	New Case Filed. Please refer to docket book for entries prior to November, No Judge 2000.
04/23/2001	✓Praecipe for Substitution of Appearance, re: enter Thomas J. Sweeney, Esq. and Melissa L. Lightcap, Esq. on behalf of Defendant in substitution for John J. Perkosky, Esq. s/Thomas J. Sweeney, Esq. s/Melissa L. Lightcap, Esq. Certificate of Service no cc
08/27/2001	Miscellaneous Payment: Copy Fee Paid by: Stephan Berger Receipt number: 1830337 Dated: 08/27/2001 Amount: \$.50 (Cash)
01/25/2002	✓Filing: Praecipe/List For Arbitration Paid by: McAllister, Kathleen S. (attorney for Allstate Insurance Company) Receipt number: 1837282 Dated: 01/25/2002 Amount: \$20.00 (Check) Copy to CA
03/26/2002	✓Letters Mailed from CA Office scheduling Arbitration hearing set for Tuesday, May 21, 2002, at 1:00 p.m., filed.
05/22/2002	✓Oath of Affirmation of Arbitrators, filed. Award of Arbitrators, NOW, this 21st day of May, 2002, Judgment in favor of Plaintiff in the amount of \$20,000.00 and costs. s/Dwight L. Koerber, Jr., Esq., Chairman s/Christopher E. Mohney, Esq. s/Mark A. Falvo, Esq. Entry of Award, NOW, this 22nd day of May, 2002, Witness My Hand and the Seal of the Court, William A. Shaw
06/03/2002	Filing: Arbitration Appeal Paid by: Eckert Seamans Cherin & Mellott Receipt number: 1843385 Dated: 06/03/2002 Amount: \$600.00 (Check)

CIVIL ACTION

DOCKET 281

APRIL 2000

Kathleen S. McAllister, Esq.	ALLSTATE INSURANCE COMPANY, as Subrogee to KEVIN B. TICE	✓ APRIL 6, 2000, COMPLAINT IN CIVIL ACTION, filed by Kathleen S. McAllister, Esq., Attorney for the Plaintiff No Certified Copies
		✓ APRIL 24, 2000, PROOF OF SERVICE, COMPLAINT, filed by /s/Kathleen S. McAllister, Esq. NO CC
		✓ JUN 08, 2000, ANSWER and NEW MATTER, filed by s/JOHN D. PERKOSKY, ESQ. NO CC VERIFICATION, s/TERESA L. CERWIN CERTIFICATE OF SERVICE, filed.
		✓ JUN 12, 2000, REPLY TO NEW MATTER, filed by s/KATHLEEN S. McALLISTER, ESQUIRE NO CC VERIFICATION, s/KATHLEEN S. McALLISTER, ESQ. CERTIFICATE OF SERVICE, filed.
Thomas J. Sweeney John D. Perkosky	GENERAL MOTORS CORPORATION	✓ AUG. 04, 2000, GENERAL MOTORS CORPORATION'S DEMAND FOR A JURY TRIAL PURSUANT TO PA. R.C.P. 1007.1(a), filed by s/THOMAS J. SWEENEY, ESQ. CERTIFICATE OF SERVICE, filed.
	Pro BY ATTY	80.00

PLEASE REFER TO COMPUTER
FOR FURTHER ENTRIES

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALLSTATE INSURANCE COMPANY, as
Subrogee to KEVIN B. TICE,

Plaintiff,

CIVIL DIVISION

No. 00-415-CO

vs.

GENERAL MOTORS CORPORATION,

Defendant.

COMPLAINT

Filed on behalf of Plaintiff, ALLSTATE
INSURANCE COMPANY, as Subrogee
to KEVIN B. TICE

Counsel of Record for this
Party:

KATHLEEN S. McALLISTER, ESQUIRE
Pa. I.D. #30764

DiBELLA & GEER, P.C.
Firm I.D. #099

322 Boulevard of the Allies
Pittsburgh, PA 15222

412-261-2900

FILED

APR 06 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALLSTATE INSURANCE COMPANY, as CIVIL DIVISION
Subrogee to KEVIN B. TICE,

No.

Plaintiff,

vs.

GENERAL MOTORS CORPORATION,

Defendant.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

OFFICE OF THE COURT ADMINISTRATOR
230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830
TELEPHONE NUMBER: (814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALLSTATE INSURANCE COMPANY, as CIVIL DIVISION

Subrogee to KEVIN B. TICE,

No.

Plaintiff,

vs.

GENERAL MOTORS CORPORATION,

Defendant.

COMPLAINT

AND NOW comes the Plaintiff, Allstate Insurance Company, as Subrogee to Kevin B. Tice, by its attorneys, DiBella & Geer, P.C., and files the following Complaint, the following of which is a statement:

1. The Plaintiff, Allstate Insurance Company, as Subrogee to Kevin B. Tice, is a Pennsylvania corporation which maintains an office at 1721 Cochran Road, Pittsburgh, Pennsylvania, 15220.
2. At all times relevant and material hereto, a 1997 Chevrolet Z71 Pickup truck owned by Kevin Tice was insured under Allstate Insurance Company (hereinafter referred to as "Allstate") automobile policy number 698260352.
3. The Defendant, General Motors Corporation, is a corporation with its principal place of business at General Motors Building, 3044 W. Grand Boulevard, Detroit, Michigan 48202.

4. At all times relevant and material hereto, the Defendant, General Motors Corporation, (hereinafter referred to as "General Motors"), was in the business of designing, manufacturing, servicing and repairing pickup trucks such as the one General Motors designed and manufactured and which was purchased by Plaintiff's insured, Kevin Tice, a 1997 Chevrolet Z71 pickup truck with VIN number 2GCEK19R3V1280872 (hereinafter referred to as the "vehicle".)

5. By reason of their expertise in the design and manufacture of pickup trucks, Defendant, General Motors, is held to the standard of care of an expert in the design and manufacture of pickup trucks such as the one purchased by Kevin Tice and identified in the previous paragraph.

6. On or about March 19, 1999, a fire occurred in the engine compartment of the vehicle as a result of a fuel leak from the vapor canister in the front of the engine compartment, which fire caused substantial damage to the vehicle and contents contained therein.

7. As a result of the damages sustained by Kevin Tice to his vehicle and contents contained therein, an insurance claim was submitted to Allstate which claim was paid in accordance with the terms and conditions of the Allstate policy. The total amount of the claim paid to Kevin Tice by Allstate was in the amount of \$24,429.50.

8. Under the terms and conditions of the Allstate policy, on payment of the claim submitted by Kevin Tice, Allstate became subrogated to any and all rights of Kevin Tice against General Motors for the fire damage of March 19, 1999.

COUNT I

NEGLIGENCE

9. Paragraphs 1 through 8, inclusive, of this Complaint are incorporated herein by reference as though set forth at length herein.

10. The above-described fire and the resulting damages were the direct, proximate and reasonably foreseeable result of the negligent, careless, reckless and wanton conduct of the Defendant, General Motors, and its servants, agents and/or employees acting within the scope of their employment as follows:

- a. In negligently and/or improperly designing, manufacturing, supplying, distributing or selling the vehicle which was purchased by Plaintiff's insured, Kevin Tice;
- b. In failing to properly inspect the vehicle and certify it as safe for its intended use;
- c. In failing to warn Kevin Tice of the deficiencies and inadequacies of the vehicle;
- d. In failing to provide the vehicle with the proper mechanisms and/or safe guards necessary for the prevention of a fire;
- e. In manufacturing the vehicle with a malfunctioning or defective vapor canister which created a hazardous and dangerous condition to Kevin Tice's property; and,
- f. In creating a hazardous and dangerous condition within the vapor canister of the vehicle which caused the fire of March 19, 1999.

11. As a result of the negligence of the Defendant, General Motors, the vehicle of Plaintiff's insured, Kevin Tice, and contents contained therein were damaged in the amount of \$24,429.50.

WHEREFORE, Plaintiff, Allstate Insurance Company, as Subrogee to Kevin B. Tice, requests damages against the Defendant, General Motors, in the amount of \$24,429.50.

COUNT II

**BREACH OF IMPLIED WARRANTY
OF FITNESS AND MERCHANTABILITY**

12. Paragraphs 1 through 11, inclusive, of this Complaint are incorporated herein by reference as though set forth at length herein.

13. The Defendant, General Motors, impliedly warranted that the aforementioned vehicle was fit for the uses and purposes for which it was designed, manufactured, supplied, distributed and/or sold and that it was safe for use by Plaintiff's insured, Kevin Tice.

14. Said vehicle was not fit for its intended purpose, and as a result of the Defendant's breach of its warranty of fitness and merchantability, the Plaintiff sustained the damages complained of above.

WHEREFORE, Plaintiff, Allstate Insurance Company, as Subrogee to Kevin B. Tice, requests damages against the Defendant, General Motors, in the amount of \$24,429.50.

COUNT III

STRICT LIABILITY UNDER THE
RESTATEMENT OF TORTS, SECOND
SECTION 402A

15. Paragraphs 1 through 14, inclusive, of this Complaint are incorporated herein by reference as though set forth at length herein.

16. The aforementioned vehicle had a defective condition, unreasonably dangerous to Kevin Tice and his property. The said defect existed when Defendant, General Motors, sold or supplied the said vehicle to Kevin Tice, the ultimate consumer or user, without substantial change in the condition in which it was manufactured.

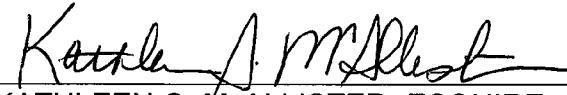
17. The unreasonably dangerous and defective condition as set forth above caused the vehicle to malfunction and caused the fire of March 19, 1999.

18. The aforesaid unreasonably dangerous and defective vehicle was the direct and proximate cause of the fire which damaged the vehicle of Plaintiff's insured, Kevin Tice, and contents contained therein in the amount of \$24,429.50.

WHEREFORE, Plaintiff, Allstate Insurance Company, as Subrogee to Kevin B. Tice, requests damages against the Defendant, General Motors, in the amount of \$24,429.50.

Respectfully submitted,

DIBELLA & GEER, P.C.

BY: 
KATHLEEN S. McALLISTER, ESQUIRE
Attorney for Plaintiff

VERIFICATION

I, KATHLEEN S. McALLISTER, ESQUIRE, Attorney for Plaintiff, certify that the factual statements contained in the foregoing COMPLAINT are true and correct to the best of my knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 P.C.S., Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

Date: 4/4/00



KATHLEEN S. McALLISTER, ESQUIRE
Attorney for Plaintiff

FILED

APR 06 2009
MILLER, ATTY
William A. Shaw
Prothonotary
Pd \$80.00

NO CC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALLSTATE INSURANCE COMPANY,
as Subrogee to KEVIN B. TICE,

Plaintiff,

vs.

GENERAL MOTORS CORPORATION,

Defendant.

CIVIL DIVISION

No. 00-415-CD

PROOF OF SERVICE

Filed on behalf of Plaintiff:

Counsel of Record for this Party:

KATHLEEN S. McALLISTER
PA ID NO 30764

DiBELLA & GEER, P.C.
Firm No. 099
322 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222
(412)261-2900

FILED

APR 24 2000

Wm. A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALLSTATE INSURANCE COMPANY,
as Subrogee to KEVIN B. TICE,

CIVIL DIVISION
No. 00-415-CD

Plaintiff,

vs.

GENERAL MOTORS CORPORATION,

Defendant.

PROOF OF SERVICE

I, KATHLEEN S. McALLISTER, Attorney for Plaintiff, ALLSTATE INSURANCE COMPANY, as Subrogee to KEVIN B. TICE, hereby certify that a true and correct copy of the Complaint filed in the within action was served on Defendant, GENERAL MOTORS CORPORATION, by mailing said Complaint by certified mail, return receipt requested. The Complaint was delivered to a representative of General Motors Corporation, as evidenced by the return receipt card which has been attached hereto and marked as Exhibit "A". Service of the Complaint was made pursuant to Pennsylvania Rule of Civil Procedure 403.

Respectfully submitted,

DiBELLA & GEER, P.C.

BY: *Kathleen S. McAllister*
KATHLEEN S. McALLISTER, ESQ.
Attorney for Plaintiff,
ALLSTATE INSURANCE COMPANY,
as Subrogee to KEVIN B. TICE

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Gen. Motors Legal Dept.
General Motors Corp.
3031 West Grand Blvd.
Detroit, Michigan 48202
ATTN: Service of Process Dept

2. Article Number (Copy from service label)

7099 3400 0603 4151 8516

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)	B. Date of Delivery
---------------------------------------	---------------------

9/13

C. Signature

S. Thomas
X

 Agent Addressee

D. Is delivery address different from item 1?

 Yes

If YES, enter delivery address below:

 No

3. Service Type

<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

FILED

APR 24 2000

11:30 AM

William A. Shaw

Prothonotary

no 96

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

**ALLSTATE INSURANCE COMPANY,
as Subrogee to KEVIN B. TICE,**

CIVIL DIVISION

Plaintiff,

No. 00-415-CD

vs.

GENERAL MOTORS CORPORATION,

ANSWER AND NEW MATTER

Defendant.

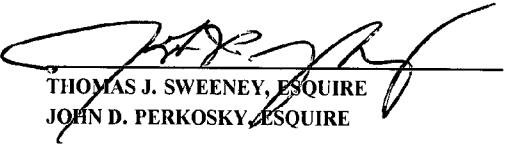
**Filed on Behalf of Defendant
General Motors Corporation**

Counsel of Record for this Party:

**Thomas J. Sweeney, Esquire
Pa. I.D. No. 34615
John D. Perkosky, Esquire
Pa. I.D. No. 83083**

**Eckert Seamans Cherin & Mellott, LLC
Firm No. 075
44th Floor, 600 Grant Street
Pittsburgh, PA 15219**

(412) 566-6000


THOMAS J. SWEENEY, ESQUIRE
JOHN D. PERKOSKY, ESQUIRE

FILED

JUN 08 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ALLSTATE INSURANCE COMPANY, as Subrogee to KEVIN B. TICE,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 00-415-CD
)	
vs.)	
)	
GENERAL MOTORS CORPORATION,)	
)	
Defendant.)	

ANSWER & NEW MATTER

AND NOW, comes General Motors Corporation ("GM") by and through its attorneys, Eckert Seamans Cherin & Mellott, LLC, Thomas J. Sweeney, Esquire and John D. Perkosky, Esquire, and files the within Answer and New Matter averring the following:

1. After reasonable investigation, GM is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 1 of the Complaint; therefore, the same are deemed denied.
2. After reasonable investigation, GM is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2 of the Complaint; therefore, the same are deemed denied.
3. The allegations contained in Paragraph 3 of the Complaint are denied as stated. It is averred that GM is a corporation incorporation under the laws of the State of Delaware with a principal place of business at 100 Renaissance Center, Detroit, Michigan 48265.

4. The allegations contained in Paragraph 4 of the Complaint are admitted in part and denied in part. GM admits that it is in the business of designing, manufacturing in part, and selling Chevrolet vehicles. GM denies that it is in the business of servicing or repairing pickup trucks. As to the remaining allegations contained in Paragraph 4 of the Complaint, GM is without information or knowledge sufficient to form a belief as to the truth or falsity of those allegations; therefore, the same are deemed denied.

5. The allegations Contained in Paragraph 5 on the Complaint are denied.

6. The allegations Contained in Paragraph 6 on the Complaint are denied.

7. After reasonable investigation, GM is without information or knowledge sufficient as to the truth or falsity of the allegation contained in Paragraph 6 of the Complaint; therefore, the same are deemed denied.

8. After reasonable investigation, GM is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 8 of the Complaint; therefore, the same are deemed denied.

COUNT I
NEGLIGENCE

9. GM incorporates by reference its responses to Paragraphs 1 through 8 of the Complaint as though the same were set forth fully herein.

10. The allegations contained Paragraph 10 of the Complaint, including subparagraphs (a) through (f), are denied. It is specifically denied that GM acted or failed to act through any alleged or identified agents, servants or employees who were allegedly acting within the scope of their authority.

11. The allegations contained in Paragraph 11 of the Complaint are denied.

WHEREFORE, defendant, General Motors Corporation, respectfully request that this Honorable Court rule in its favor and against the plaintiff and enter judgment against the plaintiff for fees and costs.

COUNT II
BREACH OF IMPLIED WARRANTY
OF FITNESS AND MERCHANTABILITY

12. GM incorporates by reference its responses to Paragraphs 1 through 11 as though the same were set forth fully herein.

13. The allegations contained in Paragraph 13 of the Complaint are denied.

14. The allegations contained in Paragraph 14 of the Complaint are denied.

WHEREFORE, defendant, General Motors Corporation, respectfully requests that this Honorable Court rule in its favor and against the plaintiff and enter judgment against the plaintiff for fees and cost.

COUNT III
STRICT LIABILITY UNDER THE
RESTATEMENT OF TORTS, SECOND, SECTION 402A

15. GM incorporates by reference its responses to Paragraph 1 through 14 of the Complaint as though the same were set forth fully herein.

16. The allegations contained in Paragraph 16 of the Complaint are denied.

17. The allegations contained in Paragraph 17 of the Complaint are denied.

18. The allegations contained in Paragraph 18 of the Complaint are denied.

WHEREFORE, defendant, General Motors Corporation, respectfully requests that this Honorable Court rule in its favor and against the plaintiff and enter judgment against the plaintiff for fees and costs.

NEW MATTER

19. GM incorporates by reference its responses to Paragraph 1 through 18 of the Complaint as of the same or set forth fully herein.

20. The allegations contained in the Complaint failed to state causes of action which relief may be granted. Therefore, the plaintiff is not entitled to recover from GM in this action.

21. The allegations or claims contained in the Complaint are barred in whole or in part by the applicable statute of limitations. Therefore, the plaintiff is not entitled to recover against GM in this action.

22. The property damage sustained by the plaintiff, as alleged in the Complaint is due to the misuse or abuse of the 1997 Chevrolet K 1500 Silverado by the plaintiff or other individuals or entities. Therefore, the plaintiff is not entitled to recover against GM.

23. The property damage sustained by the plaintiff, as alleged in the Complaint is due to a subsequent modification of the Chevrolet K 1500 Silverado by the plaintiff or other individuals or entities. Therefore, the plaintiff is not entitled to recover against GM.

24. The property damage sustained by the plaintiff, as alleged in the Complaint, is due to the intervening or superceding conduct of individuals or entities that may or may not be a party to this lawsuit. Therefore, the plaintiff is not entitled to recover against GM.

25. The property damage sustained by the plaintiff, as alleged in the Complaint, is due to the assumption of a known risk by the plaintiff. Therefore, the plaintiff is not entitled to recover against GM.

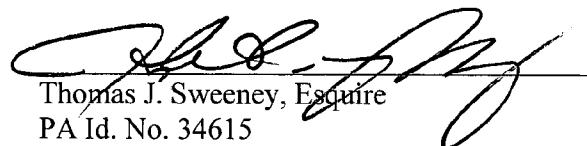
26. The property damage sustained by the plaintiff, as alleged in the Complaint, is barred in whole or in part by the applicable provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law. Therefore, the plaintiff is not entitled to recover against GM.

27. The property damage sustained by the plaintiff, as alleged in the Complaint, is due to the contributory negligence of the plaintiff or its subrogor, Kevin Tice. Therefore, the plaintiff is not entitled to recover against GM.

WHEREFORE, defendant, General Motors Corporation, respectfully requests that this Honorable Court rule in its favor and against the plaintiff and enter judgment against the plaintiff for fees and costs.

Respectfully submitted,

Eckert Seamans Cherin & Mellott, LLC.



Thomas J. Sweeney, Esquire

PA Id. No. 34615

John D. Perkosky, Esquire

PA Id. No. 83083

Firm Id. No. 075
44th Floor, 600 Grant Street
Pittsburgh, PA 15219
(412) 566-6000

Attorneys for defendant, General Motors Corporation

VERIFICATION

STATE OF MICHIGAN)
)
COUNTY OF WAYNE) SS.
)

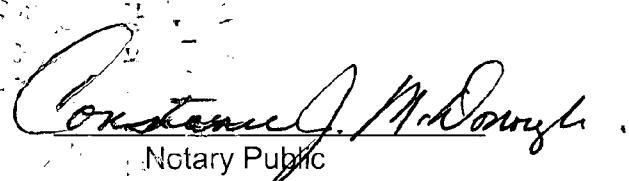
THERESA L. CERWIN says that she is authorized by General Motors Corporation under applicable law and rules to verify and does verify ANSWER & NEW MATTER on behalf of General Motors Corporation.



Theresa L. Cerwin
THERESA L. CERWIN
Authorized Agent

Subscribed and sworn to before me

this 1st day of June, 2000.



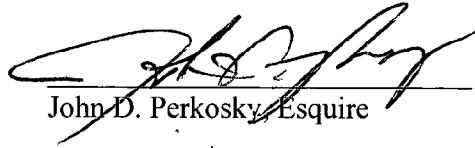
Constance J. McDonough
Notary Public

CONSTANCE J. McDONOUGH
NOTARY PUBLIC, MACOMB COUNTY, MICHIGAN
ACTING IN WAYNE COUNTY
COMMISSION EXP: 04/06/2003
COMMISSION DATE: 02/22/99

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ANSWER & NEW MATTER was served on the following Via First Class, U.S. Mail, Postage Prepaid, on this 6th day of June, 2000:

Via First Class Mail
Kathleen S. McAllister, Esquire
DiBella & Geer, P.C.
322 Boulevard of the Allies
Pittsburgh, PA 15222


John D. Perkosky, Esquire

FILED

JUN 08 2000
10:40 AM '00
William A. Shaw
Prothonotary

GRC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALLSTATE INSURANCE COMPANY,
as Subrogee to KEVIN B. TICE,

CIVIL DIVISION

No. 00-415-CD

Plaintiff,

vs.

GENERAL MOTORS CORPORATION,

REPLY TO NEW MATTER

Defendant.

Filed on behalf of Plaintiff:

Counsel of Record for this Party:

KATHLEEN S. McALLISTER
PA ID NO 30764

DiBELLA & GEER, P.C.
Firm No. 099
322 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222
(412)261-2900

LED

JUN 12 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALLSTATE INSURANCE COMPANY, CIVIL DIVISION
as Subrogee to KEVIN B. TICE,
No. 00-415-CD

Plaintiff,

vs.

GENERAL MOTORS CORPORATION,

Defendant.

REPLY TO NEW MATTER

AND NOW, comes the Plaintiff, Allstate Insurance Company, as subrogee to Kevin B. Tice, by their attorneys, DiBella & Geer, P.C. and submits this Reply to the New Matter filed on behalf of the Defendant, General Motors Corporation as follows:

1. To the extent that any response is required to paragraph 19 of the New Matter of General Motors Corporation (hereinafter referred to as "GM"), Allstate Insurance Company, as subrogee to Kevin B. Tice (hereinafter referred to as "Allstate") incorporates herein by reference the averments of its Complaint previously filed.
2. The allegations of paragraph 20 of the New Matter filed on behalf of GM constitute a conclusion of law to which no response is required of the Plaintiff.
3. The allegations of paragraph 21 of the New Matter filed on behalf of GM constitute a conclusion of law to which no response is required of the Plaintiff.
4. The allegations of paragraph 22 of the New Matter filed on behalf of GM constitute a conclusion of law to which no response is required of the Plaintiff. By way of further answer, Allstate denies any misuse or abuse of the 1997 Chevrolet K 1500 Silverado by the Plaintiff or by Kevin B. Tice or any other individual or entity.

5. The allegations of paragraph 23 of the New Matter filed on behalf of GM constitute a conclusion of law to which no response is required of the Plaintiff. By way of further answer, Plaintiff denies any subsequent modification of the Chevrolet K 1500 Silverado by the Plaintiff, Kevin Tice or any other individual or entity.

6. The allegations of paragraph 24 of the New Matter filed on behalf of GM constitute a conclusion of law to which no response is required of the Plaintiff.

7. The allegations of paragraph 25 of the New Matter filed on behalf of GM constitute a conclusion of law to which no response is required of the Plaintiff.

8. The allegations of paragraph 26 of the New Matter filed on behalf of GM constitute a conclusion of law to which no response is required of the Plaintiff.

9. The allegations of paragraph 27 of the New Matter filed on behalf of GM constitute a conclusion of law to which no response is required of the Plaintiff.

WHEREFORE, the Plaintiff, Allstate Insurance Company, as subrogee to Kevin B. Tice demands judgment in its favor and against the Defendant, General Motors Corporation in an amount in excess of \$25,000.00 plus interest and costs.

Respectfully submitted,

DiBELLA & GEER, P.C.

BY: 
KATHLEEN S. McALLISTER, ESQ.
Attorney for Plaintiff,
ALLSTATE INSURANCE COMPANY,
as Subrogee to KEVIN B. TICE

VERIFICATION

I, KATHLEEN S. McALLISTER, Esquire, hereby verify the statement set forth in the foregoing REPLY TO NEW MATTER are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsifications to authorities.



KATHLEEN S. McALLISTER, ESQUIRE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within
Reply to New Matter has been forwarded to all counsel of record by
first class mail this day 8th of June, 2000.

DiBELLA & GEER, P.C.

BY: Kathleen S. McAllister
KATHLEEN S. McALLISTER, ESQUIRE
Attorney for Plaintiff

FILED

JUN 12 2000
M 11:12 AM '00
William A. Shaw
Prothonotary
EKA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

(5)

ALLSTATE INSURANCE COMPANY,
As Subrogee to KEVIN B. TICE,

CIVIL DIVISION

Plaintiff,

No. 00-415-CD

v.

GENERAL MOTORS CORPORATION,

GENERAL MOTORS CORPORATION'S
DEMAND FOR A JURY TRIAL
PURSUANT TO PA. R.C.P. 1007.1(a)

Defendant.

Filed on Behalf of Defendant
General Motors Corporation

Counsel of Record for this Party:

Thomas J. Sweeney, Esquire
Pa. I.D. # 3415
John D. Perkosky, Esquire
Pa. I.D. # 83083

ECKERT SEAMANS CHERIN &
MELLOTT, LLC.
Firm I.D. # 075
44th Floor, 600 Grant Street
Pittsburgh, PA 15219

(412) 566-6000

FILED

AUG 04 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

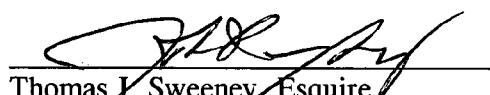
ALLSTATE INSURANCE COMPANY,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 00-415-CD
)	
v.)	
)	
GENERAL MOTORS CORPORATION,)	
)	
Defendant.)	

**GENERAL MOTORS CORPORATION'S DEMAND
FOR A JURY TRIAL PURSUANT to PA. R.C.P. 1007.1(a)**

TO: WILLIAM SHAW, PROTHONOTARY

Defendant, General Motors Corporation, pursuant to Pa. R.C.P. 1007.1(a) hereby demands a jury trial in the above-captioned matter.

Respectfully submitted,

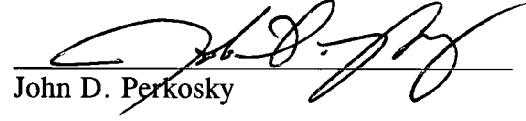


Thomas J. Sweeney, Esquire
Pa. I.D. # 34615
John D. Perkosky, Esquire
Pa. I.D. # 83083
ECKERT SEAMANS CHERIN & MELLOTT, LLC
44th Floor, 600 Grant Street
Pittsburgh, PA 15219
(412) 566-6000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing GENERAL MOTORS CORPORATION'S DEMAND FOR A JURY TRIAL PURSUANT to PA. R.C.P. 1007.1(a) was served on the following via first class, U.S. Mail, postage prepaid, this 2nd day of August, 2000.

Kathleen S. McAllister, Esquire
DiBella & Geer, P.C.
322 Boulevard of the Allies
Pittsburgh, PA 15222


John D. Perkosky

FILED

AUG 04 2000
William A. Shaw
Prothonotary
Copy to CA
SAC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALLSTATE INSURANCE COMPANY,
As Subrogee to KEVIN B. TICE,

Plaintiff,

CIVIL DIVISION

No. 00-415-CD

v.

GENERAL MOTORS CORPORATION,
Defendant.

PRAECLPICE FOR SUBSTITUTION
OF APPEARANCE

Filed on Behalf of Defendant
General Motors Corporation

Counsel of Record for this Party:

Thomas J. Sweeney, Esquire
Pa. I.D. # 3415
Melissa L. Lightcap, Esquire
Pa. I.D. # 84787

ECKERT SEAMANS CHERIN &
MELLOTT, LLC.
Firm I.D. # 075
44th Floor, 600 Grant Street
Pittsburgh, PA 15219

(412) 566-6000

FILED

Jury Trial Demanded

APR 23 2001

William A. Shaw
Prothonotary

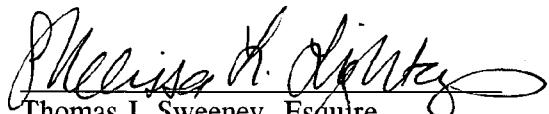
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALLSTATE INSURANCE COMPANY, As Subrogee to KEVIN B. TICE,	)	CIVIL DIVISION
Plaintiff,	)	No. 00-415-CD
)	
V.)	
)	
GENERAL MOTORS CORPORATION,)	
)	
Defendant.)	

PRAECIPE FOR SUBSTITUTION OF APPEARANCE

TO: WILLIAM SHAW, PROTHONOTARY

Kindly enter the appearance of Thomas J. Sweeney, Esquire, and Melissa L. Lightcap, Esquire of Eckert Seamans Cherin & Mellott, LLC, on behalf of Defendant, General Motors Corporation, in substitution of the appearance previously entered by John J. Perkosky, Esquire in the above-captioned matter.



Thomas J. Sweeney, Esquire

Pa. I.D. # 34615

Melissa L. Lightcap, Esquire

Pa. I.D. # 84787

ECKERT SEAMANS CHERIN & MELLOTT, LLC

44th Floor, 600 Grant Street

Pittsburgh, PA 15219

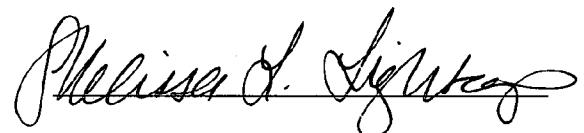
(412) 566-6000

Attorneys for Defendant, General Motors Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PRAECIPE FOR
SUBSTITUTION OF APPEARANCE was served on the following via first class, U.S. Mail,
postage prepaid, this 19th day of April, 2001.

Kathleen S. McAllister, Esquire
DiBella & Geer, P.C.
322 Boulevard of the Allies
Pittsburgh, PA 15222

A handwritten signature in black ink, appearing to read "Kathleen S. McAllister". The signature is fluid and cursive, with "Kathleen S." on the top line and "McAllister" on the bottom line.

FILED

APR 23 2001

17103146
William A. Shaw
Prothonotary

W.A.S.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALLSTATE INSURANCE COMPANY,
as Subrogee to KEVIN B. TICE,

Plaintiff,

vs.

GENERAL MOTORS CORPORATION,

Defendant.

CIVIL DIVISION

No. 00-415-CD

**PRAECIPE TO PLACE CASE ON
ARBITRATION LIST**

Filed on behalf of Plaintiff:

Counsel of Record for this Party:

KATHLEEN S. McALLISTER
PA ID NO 30764

DiBELLA & GEER, P.C.
Firm No. 099
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222
(412)261-2900

FILED

JAN 25 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALLSTATE INSURANCE COMPANY,
as Subrogee to KEVIN B. TICE,

CIVIL DIVISION

No. 00-415-CD

Plaintiff,

vs.

GENERAL MOTORS CORPORATION,

Defendant.

PRAECIPE TO PLACE CASE ON ARBITRATION LIST

TO THE PROTHONOTARY:

KINDLY place the above case on the next available arbitration list. The estimated time is $\frac{1}{2}$ day.

Respectfully submitted,

DiBELLA & GEER, P.C.

BY: 
KATHLEEN S. McALLISTER, ESQ.
Attorney for Plaintiff,
ALLSTATE INSURANCE COMPANY,
as Subrogee to KEVIN B. TICE

CERTIFICATE OF SERVICE

I, KATHLEEN S. McALLISTER, ESQUIRE, hereby certify that a true and correct copy of the foregoing PRAECIPE TO PLACE CASE ON ARBITRATION LIST was mailed by first class mail, postage prepaid, this 22 day of January, 2002 upon the following:

Thomas J. Sweeney, Esquire
Eckert, Seamans, Cherin & Mellott
44th Floor, USX Tower
600 Grant Street
Pittsburgh, PA 15219


Kathleen S. McAllister, Esquire
Attorney for Plaintiff

FILED

JAN 25 2002
m 15.00 | Off [Signature] McAlester
William A. Shaw pd \$20.00
Prothonotary
Copy CA
[Signature]



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET STREET, SUITE 228
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-6000 7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

March 14, 2001

Kathleen S. McAllister, Esquire
DeBella & Geer, P.C.
312 Boulevard of the Allies, 3rd Floor
Pittsburgh, PA 15222

Thomas S. Sweeney, Esquire
Eckert Seamans Cherin & Mellott, LLC
4th Floor, 600 Grant Street
Pittsburgh, PA 15219

FILED

MAR 26 2002

William A. Shaw
Prothonotary

RE: ALLSTATE INSURANCE COMPANY, al
vs.
GENERAL MOTORS CORPORATION
No. 00-415-CD

Dear Counsel:

The above case is scheduled for Arbitration Hearing to be held Tuesday, May 21, 2002. The following have been appointed to the Board of Arbitrators:

Dwight L. Koerber, Jr., Esquire
Ann B. Wood, Esquire
Christopher E. Mohney, Esquire
David J. Hopkins, Esquire
David R. Thompson, Esquire

If you wish to strike an Arbitrator, you must notify the undersigned within seven (7) days from the date of this letter the name you wish stricken from the list.

You will be notified at a later date the exact time of the Arbitration Hearing.

Very truly yours,

Marcy Kelley
Marcy Kelley

Deputy Court Administrator



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET STREET, SUITE 228
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-6889 7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

March 25, 2001

Kathleen S. McAllister, Esquire
DeBella & Geer, P.C.
312 Boulevard of the Allies, 3rd Floor
Pittsburgh, PA 15222

Thomas S. Sweeney, Esquire
Eckert Seamans Cherin & Mellott, LLC
4th Floor, 600 Grant Street
Pittsburgh, PA 15219

RE: ALLSTATE INSURANCE COMPANY, al
vs.
GENERAL MOTORS CORPORATION
No. 00-415-CD

Dear Counsel:

The above case is scheduled for Arbitration Hearing to be held Tuesday, May 21, 2002 at 1:00 P.M. The following have been appointed as Arbitrators:

Dwight L. Koerber, Jr., Esquire, Chairman
Christopher E. Mohney, Esquire
David R. Thompson, Esquire

Pursuant to Local Rule 1306A, you must submit your Pre-Trial Statement seven (7) days prior to the scheduled Arbitration. The original should be forwarded to the Court Administrator's Office and copies to opposing counsel and each member of the Board of Arbitrators. For your convenience, a Pre-Trial (Arbitration) Memorandum Instruction Form is enclosed as well as a copy of said Local rule of Court.

Very truly yours,

Marcy Kelley
Marcy Kelley
Deputy Court Administrator

cc: Dwight L. Koerber, Jr., Esquire
Christopher E. Mohney, Esquire
David R. Thompson, Esquire

FILED

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W
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

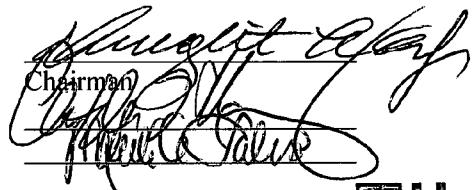
Allstate Insurance Company as
Subrogee to Kevin B. Tice
vs.
General Motors Corporation

No. 2000-00415-CD

OATH OR AFFIRMATION OF ARBITRATORS

Now, this 21st day of May, 2002, we the undersigned, having been appointed arbitrators in the above case do hereby swear, or affirm, that we will hear the evidence and allegations of the parties and justly and equitably try all matters in variance submitted to us, determine the matters in controversy, make an award, and transmit the same to the Prothonotary within twenty (20) days of the date of hearing of the same.

Dwight L. Koerber, Jr., Esq.


Chairman

Christopher E. Mohney, Esq.
Mark A. Falvo, Esq.

Sworn to and subscribed before me this
21st day of May, 2002


Bonnie R. Hudson, Deputy
Prothonotary

FILED

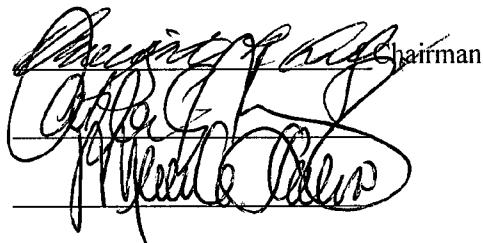
MAY 22 2002

AWARD OF ARBITRATORS

Now, this 21st day of MAY, 2002, we the undersigned arbitrators appointed in this case, after being duly sworn, and having heard the evidence and allegations of the parties, do award and find as follows:

William A. Shaw
Prothonotary

**JUDGMENT IN FAVOR OF PLAINTIFF IN THE AMOUNT OF
\$20,000.00 AND COSTS.**


Chairman

(Continue if needed on reverse.)

ENTRY OF AWARD

Now, this 22nd day of May, 2002, I hereby certify that the above award was entered of record this date in the proper dockets and notice by mail of the return and entry of said award duly given to the parties or their attorneys.

WITNESS MY HAND AND THE SEAL OF THE COURT


Prothonotary

By _____

FILED

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019;15 81

MAY 22 2002

William A. Shaw
Prothonotary

Notices to Atty Kathleen S. McAllister &
Atty Thomas J. Sweeney

Allstate Insurance Company as subrogee
to Kevin B. Tice

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

Vs.
General Motors Corporation

No. 2000-00415-CD

COPY

NOTICE OF AWARD

TO: Kathleen S. McAllister, Esq.

You are herewith notified that the Arbitrators appointed in the above case have determined their award in this office on May 21, 2002 and have filed and docketed the award on May 22, 2002:

Judgment in favor of Plaintiff in the amount of \$20,000.00 and costs.

William A. Shaw

Prothonotary

By

Date 5/22/02

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

Allstate Insurance Company
Kevin B. Tice

Vs.
General Motors Corporation

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

No. 2000-00415-CD

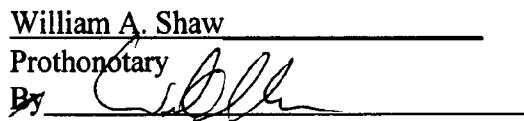
COPY

NOTICE OF AWARD

TO: Thomas J. Sweeney, Esq.

You are herewith notified that the Arbitrators appointed in the above case have determined their award in this office on May 21, 2002 and have filed and docketed the award on May 22, 2002:

Judgment in favor of Plaintiff in the amount of \$20,000.00 and costs.

William A. Shaw
Prothonotary
By 

Date 5/22/02

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

**IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA**

ALLSTATE INSURANCE COMPANY,
As Subrogee to KEVIN B. TICE,

CIVIL DIVISION

Plaintiff,

No. 00-415-CD

v.

GENERAL MOTORS CORPORATION,

PRE-TRIAL STATEMENT

Defendant.

Filed on Behalf of Defendant
General Motors Corporation

Counsel of Record for this Party:

Thomas J. Sweeney, Esquire
Pa. I.D. # 34615
Melissa L. Lightcap, Esquire
Pa. I.D. # 84787

ECKERT SEAMANS CHERIN &
MELLOTT, LLC.
Firm I.D. # 075
44th Floor, 600 Grant Street
Pittsburgh, PA 15219

(412) 566-6000

Jury Trial Demanded

RECEIVED
AUG 07 2002
COURT ADMINISTRATOR'S
OFFICE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ALLSTATE INSURANCE COMPANY,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 00-415-CD
)	
v.)	
)	
GENERAL MOTORS CORPORATION,)	
)	
Defendant.)	

GENERAL MOTORS CORPORATION'S PRE-TRIAL STATEMENT

General Motors, by and through its undersigned counsel, serves the following
Pre-Trial Statement:

STATEMENT OF THE CASE

On March 19, 1999, Mr. Tice was operating his 1997 Chevrolet K1500 Silverado pick-up truck (VIN 2GCEK19R3V1280872) (hereinafter "truck") on State Route 53 near Phillipsburg, PA when he decided to take a short-cut on an unmarked dirt road. Plaintiff's Statement to Allstate Property-Casualty Claims Service Investigator Jerome Buyny indicates the weather conditions at the time of the incident were wet and snowing and became worse as Mr. Tice continued down this path. According to Mr. Tice, the dirt path was muddy and the truck became "sandbagged". Mr. Tice stated to Investigator Buyny that he could not move the vehicle in either direction.

Due to the remote location, Mr. Tice could not summon assistance and left the truck to walk to a neighbor's house, nearly (2) hours away, to request help. Mr. Tice

eventually arrived at a friend's home and requested help from Jeff Reams. As they approached, they observed that the truck was on fire.

On April 6, 1999, Allstate Insurance Company, as subrogee of Kevin Tice, filed the instant action for damages allegedly sustained to the truck due to the fire in the amount of \$24,429.50. Simply put, Plaintiff's theory that the fire was caused by a fuel leak from the vapor canister in the engine compartment is not supported by the physical evidence and facts of this case.

Allstate Insurance Company's alleged expert opines that the cause of the fire was the liberation of fuel from the truck's vapor canister. In reaching this decision, Allstate Insurance Company's alleged expert relies on a National Highway Traffic Safety Administration investigation report (EA98024) ("investigation report") which reviewed certain vapor canisters. **This investigation report was never applicable to the truck at issue.** In fact, the vapor canister used in Mr. Tice's truck is different from the vapor canisters used in GM full-size vans, which were the subject of EA98024. Accordingly, there were no issues or recalls associated with the vapor canister for Mr. Tice's truck.

Moreover, General Motors expert, Ronald E. Orlando, opines that Mr. Tice's attempts to free the truck from its stuck position overheated the transmission and exhaust system causing the expulsion of transmission fluid into the engine compartment. The Owners Manual for plaintiff's truck provides on page 5-34 under a cautionary note for the category of being stuck in sand, **mud**, ice, or snow, the following:

If you let your tires spin at high speed, they can explode and you or others could be injured. And, the transmission or other parts of the vehicle can overheat. That could cause an engine compartment fire or other damage

Owner's Manual p. 5-34 (emphasis added).

Even though the truck is equipped with an auxiliary transmission fluid cooler, all vehicles require dynamic airflow through the cooler and engine compartment. Without the vehicle moving forward, the dynamic airflow was not present. This, coupled with Mr. Tice's spinning of the tires, allowed the transmission fluid to overheat and expand. In this condition, the fluid is combustible and may be ignited by the overheated engine/transmission.

In sum, General Motors expressly denies that it is liable to Allstate Insurance Company for any alleged damages it may have incurred as a result of the incident of March 19, 1999.

APPLICABLE CASE LAW

Pennsylvania Product Liability Law

Section 402A of the Restatement (Second) of Torts was adopted as the law of Pennsylvania in *Webb v. Zern*, 422 Pa. 424, 427, 220 A.2d 853, 854 (1966). Section 402A provides that:

(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer...is subject to liability for physical harm thereby caused to the ultimate user or consumer, if

a. the seller is engaged in the business of selling such a product, and

b. it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

Section 402A does not impose absolute liability as a manufacturer is the guarantor of its product, not an insurer. *See Azzarello v. Black Bros. Co.*, 391 A.2d 1020, 1023-24 (Pa. 1978).

Under Section 402A, **the plaintiff must establish (1) that the product was defective, (2) that the defect existed when it left the hands of the defendant and (3) that the defect caused the harm.** *See Davis v. Berwind Corp.*, 547 Pa. 260 (1997) (emphasis supplied).

Application of Pennsylvania's Economic Loss Rule

Counts I and III of Plaintiff's Complaint are legally insufficient pursuant to the economic loss rule. It is well-settled in Pennsylvania that purely economic losses, or losses that comprise damages only for the replacement cost of the allegedly defective product, are not recoverable in tort. *See e.g., REM Coal Company, Inc. v. Clark Equipment Company*, 386 Pa. Super. 401, 563 A.2d 128 (1989) (Applying the economic loss rule between commercial entities to bar claims of negligence and strict liability); *New York State Electric & Gas Corp. v. Westinghouse Electric Corp.*, 387 Pa. Super. 537, 549, 564 A.2d 919, 925 (1989) (holding that recovery for the damages pleaded in the **negligence and strict liability counts is barred as a matter of law** because the losses alleged are purely economic in nature and cannot be recovered in negligence or strict liability") (emphasis supplied).

The public policy that spawned tort recovery in the product liability context was a desire to provide protection of the public from unsafe products beyond that provided by

contract law. *See REM Coal Co.*, 386 Pa. Super. at 550, 563 A.2d at 926. Tort product liability theories impose responsibility on the supplier of a defective product whenever it causes personal injury or damage to other property because this is deemed to be the best way to allocate the risk of unsafe products and to encourage safer manufacture and design. *See id.*

Where a product malfunctions in a manner that does not cause damage outside of the product itself, Pennsylvania courts have repeatedly found that this public policy is not involved because contract theories such as breach of warranty are specifically aimed at, and perfectly suited to, provide complete redress in cases involving such economic losses. *See id.* All of such losses are based upon, and flow from, the purchaser's loss of the benefit of his bargain and his disappointed expectations as to the product that he purchased. *See id.*

Jones v. General Motors Corporation, 428 Pa. Super. 544, 631 A.2d 665 (1993) is dispositive. In *Jones*, the Pennsylvania Superior Court extended the doctrine first enunciated in *REM Coal Company, Inc.*, and held that the plaintiff-buyers of a truck destroyed when a malfunction caused it to catch fire had no cause of action against the defendant-manufacturer for strict liability or negligence where the only damage alleged was loss of the truck. General Motors respectfully submits that *Jones* is binding upon this Court.

To the extent the Court finds that Plaintiff had "other property" damaged other than the truck itself, then strict liability and negligence theories should only apply to the "other property" and not the truck. In *Erie Insurance Group v. Ford Motor Co.*, Ford Motor Company filed preliminary objections in the nature of demurrer to Plaintiff's

negligence and strict liability counts of the Complaint pursuant to the economic loss rule.

Erie Ins. Group v. Ford Motor Co., 51 D&C 4th 220, 220 (CCP – Adams County 2001).

The trial court sustained Ford's preliminary objections as it related to the vehicle, but overruled the preliminary objections to the extent that personal property contained in the vehicle was damaged. *See id.* at 224. Consequently, the Court should apply the economic loss rule to bar Plaintiff's recovery under tort theories for the truck and only apply tort theories to Plaintiff's other property in the truck at the time of the incident to the extent the Plaintiff proves its losses in that regard.

Plaintiff's Misuse/Abuse of the Truck

Plaintiff cannot prove, as a matter of law, that an alleged defect or nonconformity existed in the truck. Under Pennsylvania law, misuse/abuse of a product is a defense in a products liability action. *See Gottfried v. American Can Co.*, 339 Pa. Super. 403, 489 A.2d 222 (1985), *overruled on other grounds by Duchess v. Langston Corp.*, 564 Pa. 529, 769 A.2d 1131 (2001). *See also, Childers v. Power Line Equip.*, 452 Pa. Super. 94, 681 A.2d 201, 208 (1993). A person misuses a product (1) if he used it in a manner neither intended nor reasonably foreseeable by the supplier; or (2) if he continued to use the product after becoming aware of a defect; or (3) if he caused the product to be used without sufficient advice to the user. *See id.*

Ample evidence exists to prove that Mr. Tice caused the fire through his own misuse/abuse of the truck. The Owner's Manual clearly provides that a driver should not spin the tires when stuck in mud as the transmission or other parts of the vehicle could overheat and potentially lead to an engine compartment fire. This is precisely what occurred in this case.

Accordingly, Allstate Insurance Company's remaining theory, breach of implied warranty of fitness and merchantability must fail as Plaintiff has failed to prove any defect or nonconformity in the truck.

LIST OF WITNESSES

General Motors may call any of the following witnesses at the time of trial:

Liability

Kevin B. Tice
RR #1, Box 599
Houtzdale, PA 16651

Jeff Reams
(Current address unknown)

Trooper Ager
Pennsylvania State Police - Woodland Barracks
R.D. #2, Box 314
Woodland, PA 16881-9781

Trooper Green
Pennsylvania State Police - Woodland Barracks
R.D. #2, Box 314
Woodland, PA 16881-9781

Jerome Buyny
2624 Wyncote Road
Bethel Park, PA 15102

Representative of Price Parkway Towing
Phillipsburg, PA

Representative of Allstate Property-Casualty Claims
1721 Cochran Road
Pittsburgh, PA 15220

Ronald E. Orlando
GM Field Performance Assessment
30500 Mound Road
Warren, MI 48090-9055
(Report and C.V. attached)

Gerald A. Confer, P.E.
11388 Lakehaven Drive
White Lake Twp, MI 49386
(Photographs taken by Mr. Confer attached)

Damages

Kevin B. Tice
RR #1, Box 599
Houtzdale, PA 16651

Trooper Ager
Pennsylvania State Police - Woodland Barracks
R.D. #2, Box 314
Woodland, PA 16881-9781

Trooper Green
Pennsylvania State Police - Woodland Barracks
R.D. #2, Box 314
Woodland, PA 16881-9781

Jerome Buyny
2624 Wyncote Road
Bethel Park, PA 15102

Representative of Price Parkway Towing
Phillipsburg, PA

Representative of Allstate Property-Casualty Claims
1721 Cochran Road
Pittsburgh, PA 15220

Ronald E. Orlando
GM Field Performance Assessment
30500 Mound Road
Warren, MI 48090-9055
(Report and C.V. attached)

General Motors reserves the right to call any witness identified in the course of discovery, identified in documents produced during the course of discovery, identified in pre-trial statements, or called by any other party to testify at the trial of this lawsuit.

General Motors reserves the right to call impeachment and/or rebuttal witnesses as necessary or appropriate.

General Motors reserves the right to call witnesses to authenticate and introduce into evidence surveys, photographs, films, videotapes and/or written records if required by any party at the time of trial.

EXHIBITS

General Motors may introduce any or all of the following exhibits at the time of trial:

- 1) Expert Report with attachments and C.V. of Ronald E. Orlando
- 2) Photographs of plaintiff's truck taken by Gerald A. Confer
- 3) Drawings and diagrams of plaintiff's truck
- 4) New Vehicle Invoice (VIN: 2GCEK19R3V1280872)
- 5) 1997 Chevrolet C/K Truck Owner's Manual
- 6) 1997 Chevrolet Light Duty Truck Warranty and Owner's Assistance Information Booklet
- 7) Warranty History printout
- 8) Campaign Status printout
- 9) Plaintiff's Investigative Report of Jerome Buyny
- 10) Plaintiff's Cause and Origin Report of Alan Orringer
- 11) Plaintiff's Valuation Report
- 12) NHTSA Investigation Report EA98024

- 13) Documentary or demonstrative evidence prepared by Ronald E. Orlando to explain his analysis and opinions in this case
- 14) Technical literature relating to issues relevant to the claims in this lawsuit
- 15) Documents or calculations relied upon or offered for admission by any party to this lawsuit
- 16) Other documents or demonstrative evidence in the possession of General Motors necessary to refute or rebut, explain or illustrate issues arising during the trial of this case
- 17) All pleadings filed in the case
- 18) All documents produced by plaintiff during the course of discovery
- 19) All documents produced by General Motors during the course of discovery

General Motors reserves the right to use or offer into evidence any exhibit or piece of demonstrative evidence that is identified by any party in its pre-trial statement or offered at trial.

General Motors reserves the right to supplement or amend this Exhibit List at any time up to and including time of trial.

ESTIMATE OF LENGTH OF TRIAL

General Motors estimates the length of trial to be two (2) days.

STIPULATIONS

None.

SPECIAL ARGUMENTS

None.

ANTICIPATED MOTIONS IN LIMINE

General Motors anticipates the following Motions in Limine for this case:

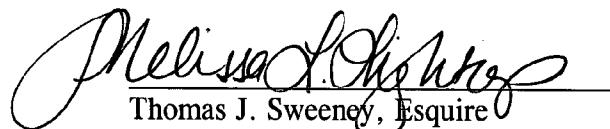
- 1) Plaintiff's expert, Mr. Orringer, is not qualified, as a matter of law, to offer opinion testimony as to whether an alleged defect existed in the truck as Mr. Orringer has no automotive design qualifications; the cause and origin of the fire as Mr. Orringer has no fire investigation qualifications; and the application of NHTSA Engineering Analysis 98024.
- 2) Plaintiff's failure to maintain and preserve the evidence in its immediate post-accident condition warrants an appropriate evidentiary sanction due to the resulting prejudice to General Motors.
- 3) Plaintiff's inability to bring strict liability and negligence counts in its Complaint pursuant to the economic loss rule.

General Motors reserves the right to file additional Motions in Limine after review of the Plaintiff's Pre-Trial Statement.

RESERVATION OF RIGHTS

General Motors reserves the right to amend and supplement its Pre-Trial Statement at any time up to and including the time of trial and also reserves the right to offer rebuttal and/or impeachment evidence.

Respectfully submitted,



Thomas J. Sweeney, Esquire

Pa. I.D. # 34615

Melissa L. Lightcap, Esquire

Pa. I.D. # 84787

ECKERT SEAMANS CHERIN & MELLOTT, LLC

44th Floor, 600 Grant Street

Pittsburgh, PA 15219

(412) 566-6000

Attorneys for Defendant, General Motors Corporation



GENERAL MOTORS NORTH AMERICA
Safety Integration

April 30, 2002

Melissa L. Lightcap, Esq.
ECKERT, SEAMANS, CHERIN & MELLOT
600 Grant Street – 42nd Floor
Pittsburgh, PA 15219

Re: Kevin Tice vs. General Motors Corporation (PD 360637)

At your request I am providing this letter with my assessment of the incident that occurred on March 19, 1999, where it is alleged that a fire occurred in a 1997 Chevrolet Silverado pickup truck (VIN: 2GCEK19R3V1280872) which was leased by Mr. Kevin Tice. The subject vehicle had been in service about 19 months and had approximately 34,000 miles on it at the time of the alleged fire.

In preparing this assessment, I had available for review the following:

1. Plaintiff's Complaint
2. Plaintiff's Origin and Cause Expert Report with color photographs (Alan D. Orringer)
3. Plaintiff's Investigation Report (Jerome Buyny)
4. Plaintiff's Valuation Report
5. October 2, 2000 Early Technical Assessment (ETA) Preliminary Report with color photographs (G. A. Confer)
6. General Motors Corporation Vehicle Information System
 - New Vehicle Invoice
 - Warranty History
 - Campaign Status
7. 1997 Chevrolet C/K Truck Owner's Manual
8. NHTSA Defect Investigation (EA98024)

My background includes over 25 years as an automotive engineer and in addition over 25 years in the fire service. I have been certified as a fire investigator per the standards set forth in NFPA 1033, "Standards for Professional Qualifications for Fire Investigator". I have attached a copy of my curriculum vitae as Exhibit 1.

The photographs appear to indicate that the fire originated in the forward end of the vehicle and progressed rearward. This is evidenced by the change of appearance of the painted body surface and the amount and degree of components that were consumed. There are no painted surfaces remaining or body mounted items (decals, wheel housing trim, etc.) until you reach the back portion of the vehicle rear of the tires. In addition, many of the larger underhood components (HVAC compressor, brake master cylinder, etc.) were consumed including a portion of the automatic transmission case.

The photographs also appear to indicate that the subject vehicle was modified with aftermarket components, which included a body lift kit, running boards (nerf bars), wheels and tires. The



vehicle invoice indicates that the subject vehicle was built as a Chevrolet model CK10753 pickup. Some of the regular production options (RPO's) that the subject vehicle was equipped with include:

- GU6 (3.42:1 ratio rear axle)
- KC4 (engine oil cooler, auxiliary)
- KNP (transmission fluid cooler, auxiliary)
- L31 (5.7 L V-8 SFI engine)
- M30 (4L60 automatic transmission)
- NP1 (electric shift control, two speed)
- NZZ (skid plate, "off road")
- Z71 ("off road" chassis equipment)

The subject vehicle had no campaigns or recalls assigned to it. The plaintiff's origin and cause expert cites a NHTSA defect investigation report (EA98024) for his origin and cause of the alleged fire due to a theory of fuel being liberated from the vapor canister. However this is in error. The recall that was subsequently published (GM # 00031 or NHTSA # 00V110000), reveals this vehicle campaign was only being considered on the GM full-size van platform (G10, G20 and G30) and was never considered on a C/K truck platform which the 1997 C/K Silverado pickup is.

The claimant (Mr. Tice) stated that he was taking a short cut back to his home. He further states, and it is collaborated by the State police statement, that the route chosen was in a wooded area and during bad (wet) weather. According to the plaintiff's investigator, the claimant states that he became stuck on a large hump of dirt, which left the wheels lifted. The claimant attempted to free his vehicle by going forward and reverse at least once and could not get traction.

The 1997 Chevrolet C/K Truck Owner's Manual cites on page 5-34, as a cautionary note under the category " 'If you 're stuck: In sand, mud, ice or snow' If you let your tires spin at high speed, they can explode and you or others could be injured. And, the transmission or other parts of the vehicle can overheat. That could cause an engine compartment fire or other damage. ..." The pertinent sections of the Owner's Manual has been attached as Exhibit 2.

It is my opinion with a reasonable degree of engineering certainty, that the claimant (Mr. Tice) in his attempt to free the vehicle from the stuck condition, overheated the transmission and exhaust system. Even though the subject vehicle was equipped with an auxiliary transmission fluid cooler (RPO KNP), there was not enough dynamic airflow through the cooler and the engine compartment, since the vehicle was not moving, to cool these components or areas. These powertrain cooling components are engineered to have a minimum level of dynamic airflow through them to properly perform. Without the vehicle moving forward, the dynamic airflow was not present. This then allowed the transmission fluid to overheat and expand. The hot fluid was eventually expelled from the transmission and/or transmission dip stick onto the hot exhaust system. The hot exhaust system served as a hot surface ignition source for the transmission fluid, which is an ignitable liquid. The expulsion of transmission fluid can also be supported by the apparent lack of transmission fluid on the transmission dipstick (see photographs attached as Exhibit 3). To support my opinion, I have utilized the photographs, which appear to depict in part or full, the consumption of major underhood and underbody components, which are in close proximity to the exhaust system.



Ronald E. Orlando
GM Field Performance Assessment

ENCLOSURE/S

Ronald E. Orlando

Curriculum Vitae

PROFESSIONAL EXPERIENCE

May 2000 - Present

Product Analysis
General Motors Corporation

Staff Analysis Engineer

Evaluate safety and performance aspects of current and past production vehicles with respect to vehicle fires. Provide technical and engineering analysis of product liability allegations. Coordinate engineering response to product liability litigation. Maintain knowledge of current corporate and competitive products.

Jan 1984 - May 2000

Truck Engineering
General Motors Corporation

Engineering Group Manager

Management of truck product design and development. Identification and resolution of performance issues from pre-prototype to production focusing on customer satisfaction. Areas of responsibility included HVAC, powertrain cooling and thermal management integration for underhood and underbody designs. Responsible for budget, vehicle fleet and laboratory test site.

Staff Project Engineer

Program manager for a van homologation program. Managed design, witness testing, budget, program timing, liaison to product planning and engineering program execution teams.

Sr. Project Engineer

Lead responsible engineer for the development of HVAC systems in light duty trucks.

June 1973 – Jan 1984

Product Engineering
Harrison Radiator Division
General Motors Corporation

Sr. Project Engineer

Lead responsible engineer for the design of HVAC systems for international vehicle programs. Manufacturing and purchasing coordination with various suppliers throughout Western Europe.

Project Engineer

Heat exchanger design and development for aviation, industrial and marine applications.
Heat exchanger design and build for a 40 kW and 5 MW commercial fuel cell application.

EDUCATION

Canisius College 1983
Buffalo, NY
Master of Business Administration

Erie Community College 1978
Buffalo, NY
Associate in Applied Science, Fire Protection Technology

State University of NY at Buffalo 1973
Buffalo, NY
Bachelor of Science, Mechanical Engineering

PUBLICATIONS

Published several technical papers in the field of vehicular HVAC, which received peer review.

HONORS

- General Motors Chairman's Honors; July 1998
- General Motors President's Council Honors; April 1996
- Society of Automotive Engineers; Outstanding Oral Presentation; March 1989
- General Motors Life Saving Award; 1976

ADDITIONAL TRAINING

- Traffic Accident Reconstruction 1; Center for Public Safety; Northwestern University
- Basic Fire Investigation School; Michigan State Police – Fire Marshall Division
- Advanced Fire Investigation School; Michigan State Police – Fire Marshall Division
- Vehicle Fire Investigation School; Michigan State Police – Fire Marshall Division
- NFPA 921 Update Training; International Association of Arson Investigators
- 26 Controlled Vehicle Burns (accidental and incendiary causation)
- 2 Structural Building Burns (incendiary causation)
- 3 Tested Seminars sponsored by OCAAFII (misc. fire investigation topics)

PROFESSIONAL ASSOCIATIONS

- International Association of Arson Investigators (IAAI)
- International Association of Arson Investigators, Michigan Chapter (IAAI-MI)
- Oakland County Association of Arson and Fire Investigators, Inc. (OCAAFII)
- Michigan State Firefighters Association (MSFA)

FIRE SERVICE

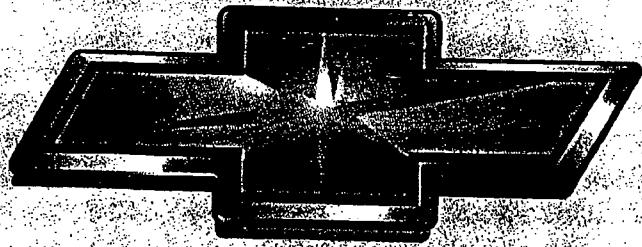
- 25 years of volunteer and paid-on-call fire service experience (New York State [past Fire Chief] and Michigan)
- Currently with the Washington Township Fire Department. Hold the rank of Captain/EMT. Responsible for fire suppression and rescue operations, annual training program, origin and cause determination (structural and vehicular) and assist with the preparation of the annual budget and SOG's.

FIRE SERVICE continued

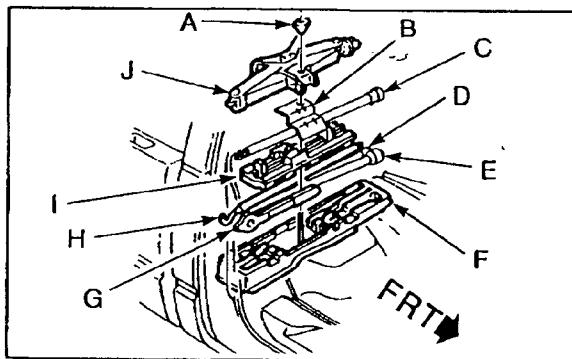
- Fire Service Certification (Michigan Fire Fighters Training Council)
 - Firefighter I and II
 - Fire Officer I, II and III
 - Hazardous Materials Awareness Level
 - Hazardous Materials Operations Level
 - Incident Command Systems
 - Emergency Response to Terrorism: Basic Concepts
 - Emergency Response to Terrorism: Tactical Considerations-Company Officer
 - State Fire Training Instructor
- National Board on Fire Service Professional Qualifications
 - Fire Investigator (certified to NFPA 1033)

Updated 04-15-02

CHEVROLET C/K TRUCK



1997 OWNER'S MANUAL



Chassis Cab Models

A. Nut	F. Jack and Tool Storage Box
B. Retainer	G. Ratchet
C. Jack Handle Extension	H. Jack Handle
D. Jack Handle Extension	I. Tool Retainer
E. Wheel Wrench	J. Jack

If You're Stuck: In Sand, Mud, Ice or Snow

What you don't want to do when your vehicle is stuck is to spin your wheels too fast. The method known as "rocking" can help you get out when you're stuck, but you must use caution.

CAUTION:

If you let your tires spin at high speed, they can explode, and you or others could be injured. And, the transmission or other parts of the vehicle can overheat. That could cause an engine compartment fire or other damage. When you're stuck, spin the wheels as little as possible. Don't spin the wheels above 35 mph (55 km/h) as shown on the speedometer.

NOTICE:

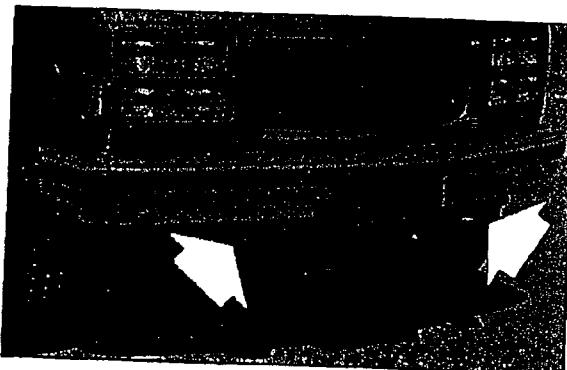
Spinning your wheels can destroy parts of your vehicle as well as the tires. If you spin the wheels too fast while shifting your transmission back and forth, you can destroy your transmission.

For information about using tire chains on your vehicle, see "Tire Chains" in the Index.

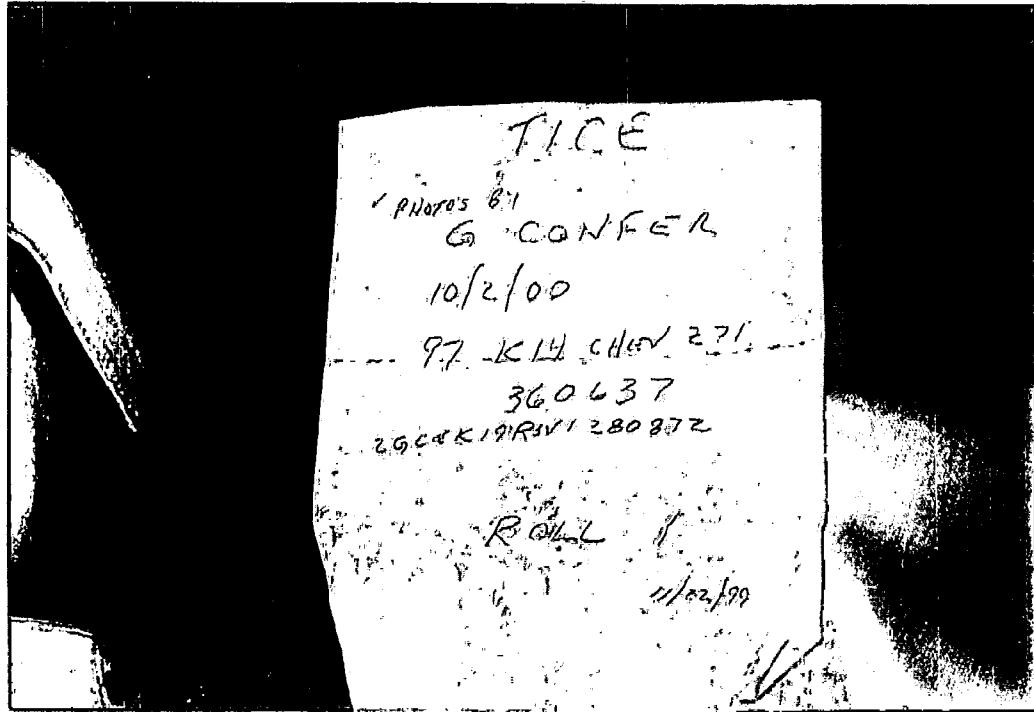
Rocking Your Vehicle To Get It Out

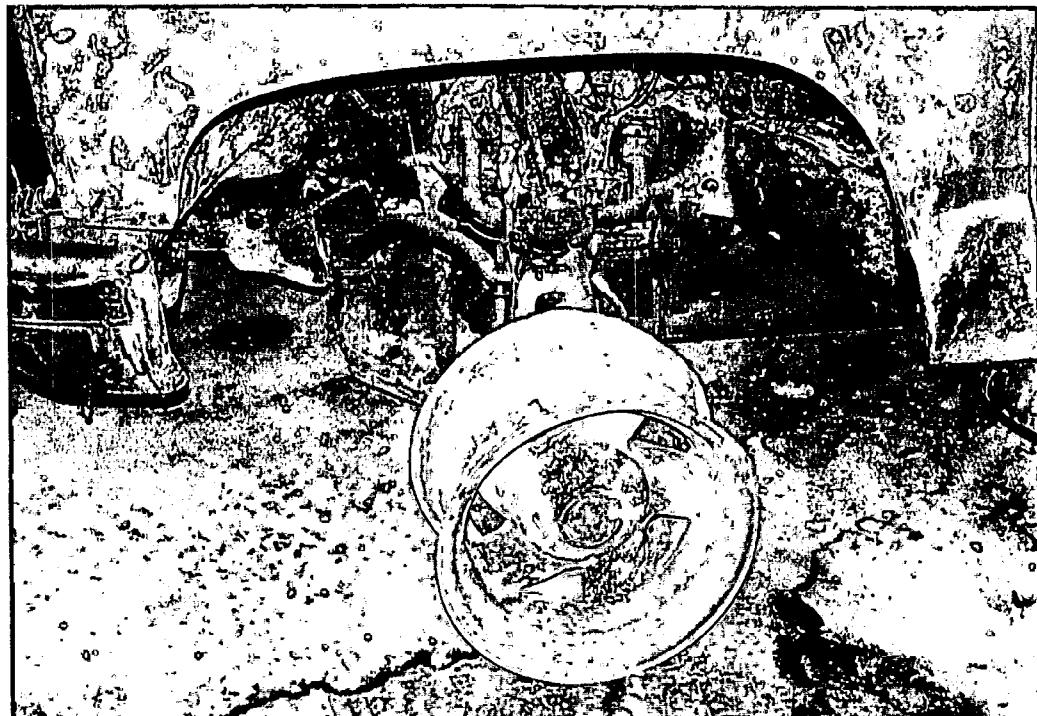
First, turn your steering wheel left and right. That will clear the area around your front wheels. Then shift back and forth between REVERSE (R) and a forward gear (or with a manual transmission, between FIRST (1) or SECOND (2) and REVERSE(R)), spinning the wheels as little as possible. Release the accelerator pedal while you shift, and press lightly on the accelerator pedal when the transmission is in gear. If that doesn't get you out after a few tries, you may need to be towed out. Or, you can use your recovery hooks if your vehicle has them. If you do need to be towed out, see "Towing Your Vehicle" in the Index.

Using the Recovery Hooks

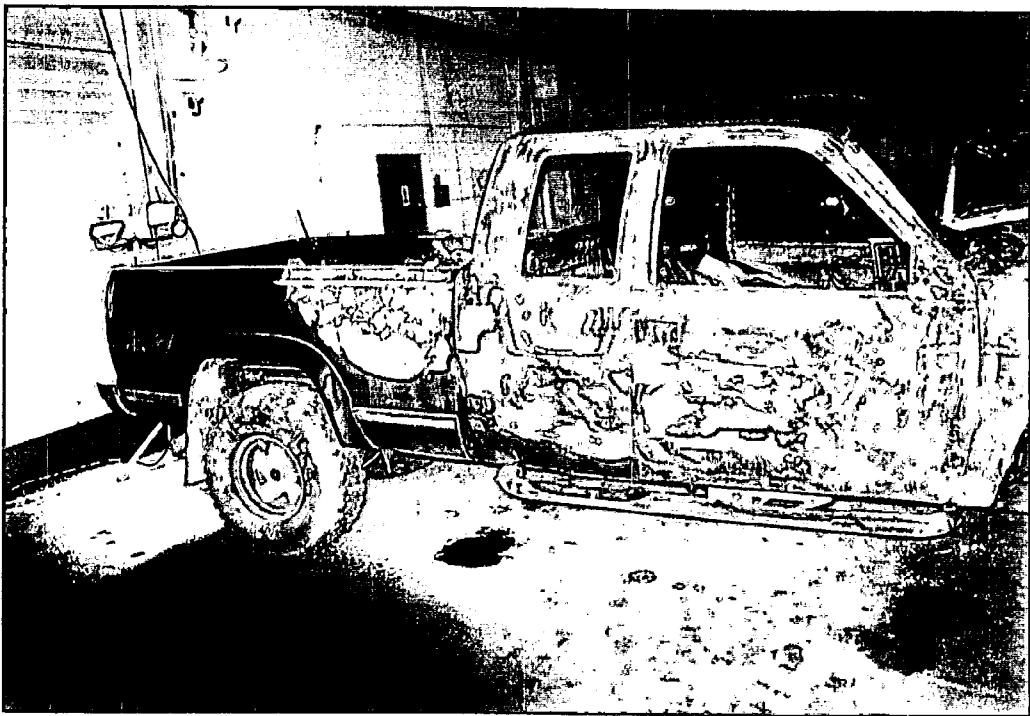


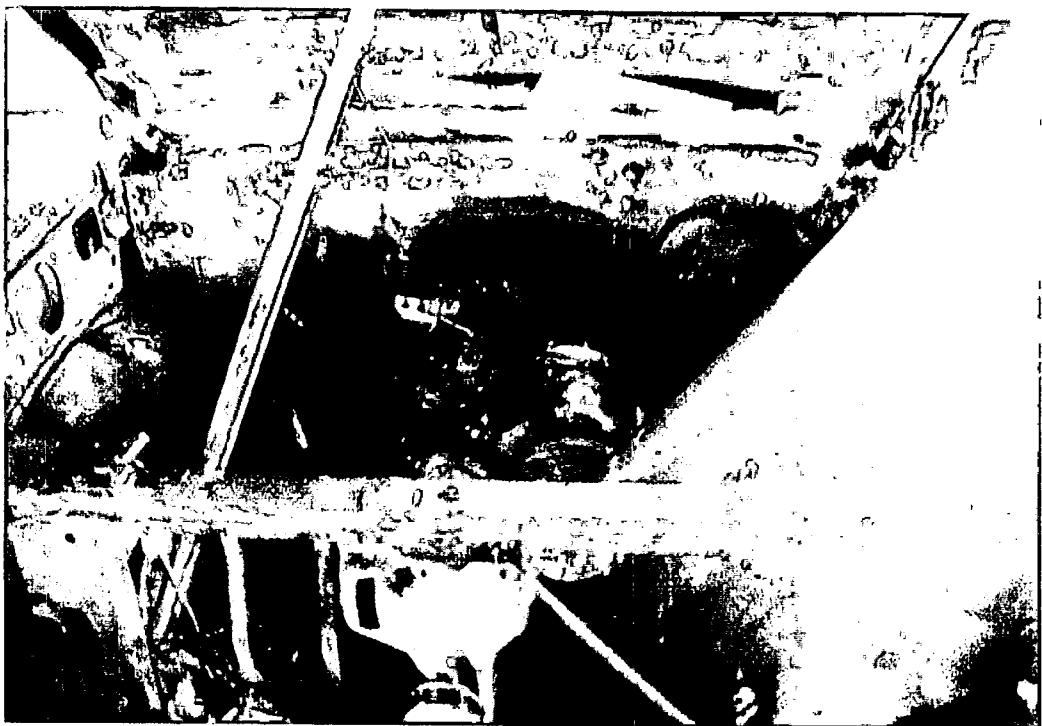
Your vehicle may be equipped with recovery hooks. The recovery hooks are provided at the front of your vehicle. You may need to use them if you're stuck off-road and need to be pulled to some place where you can continue driving.

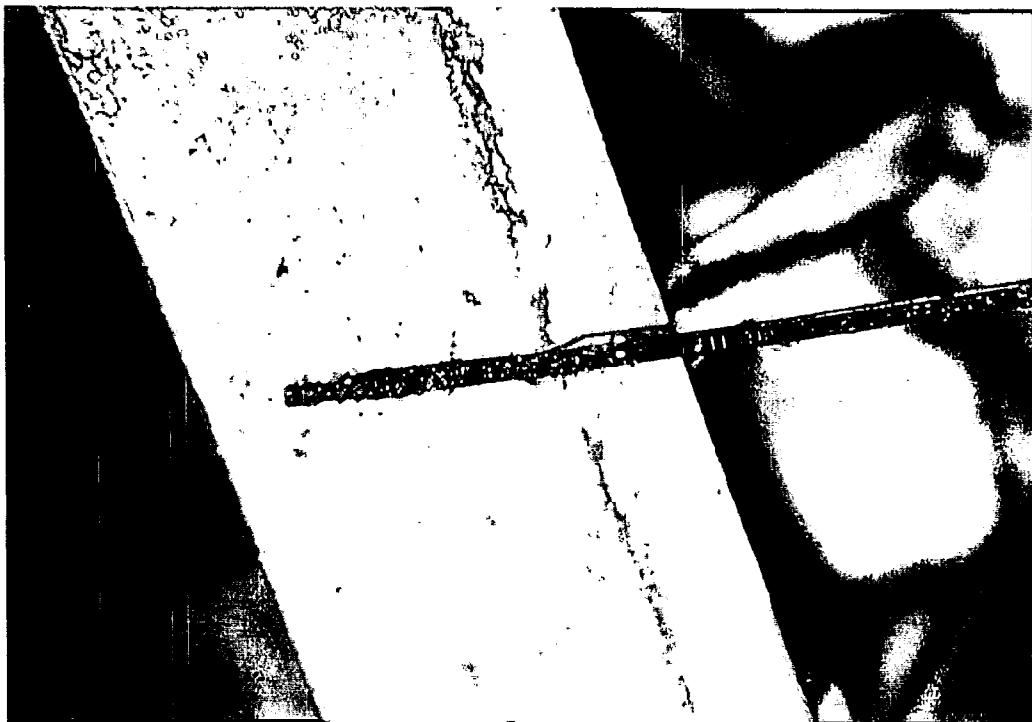
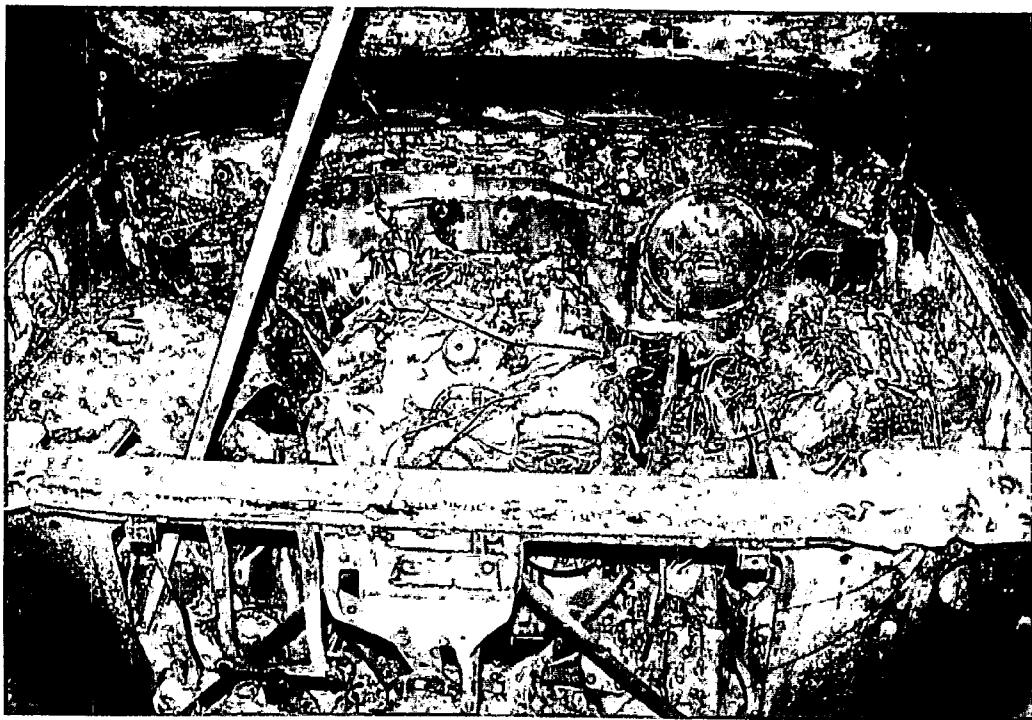


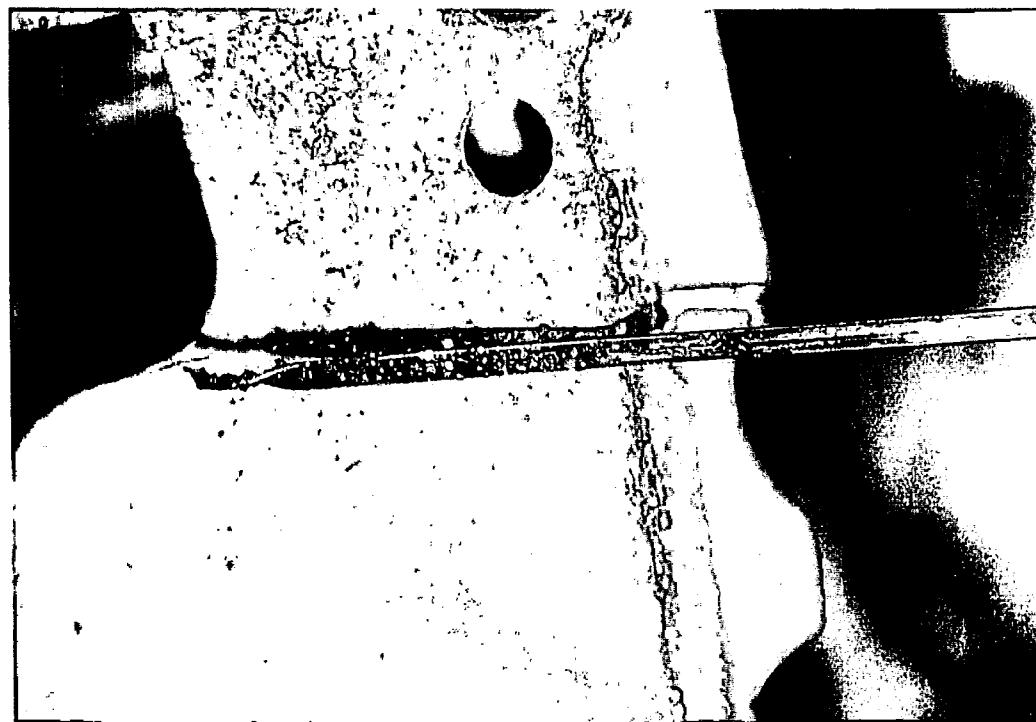




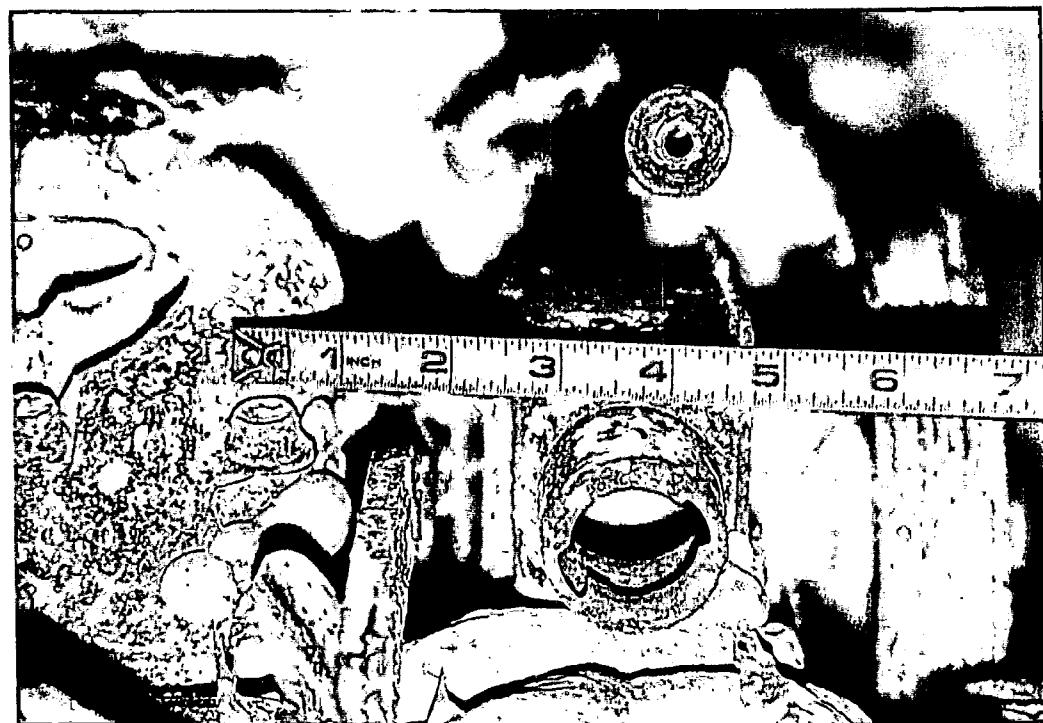
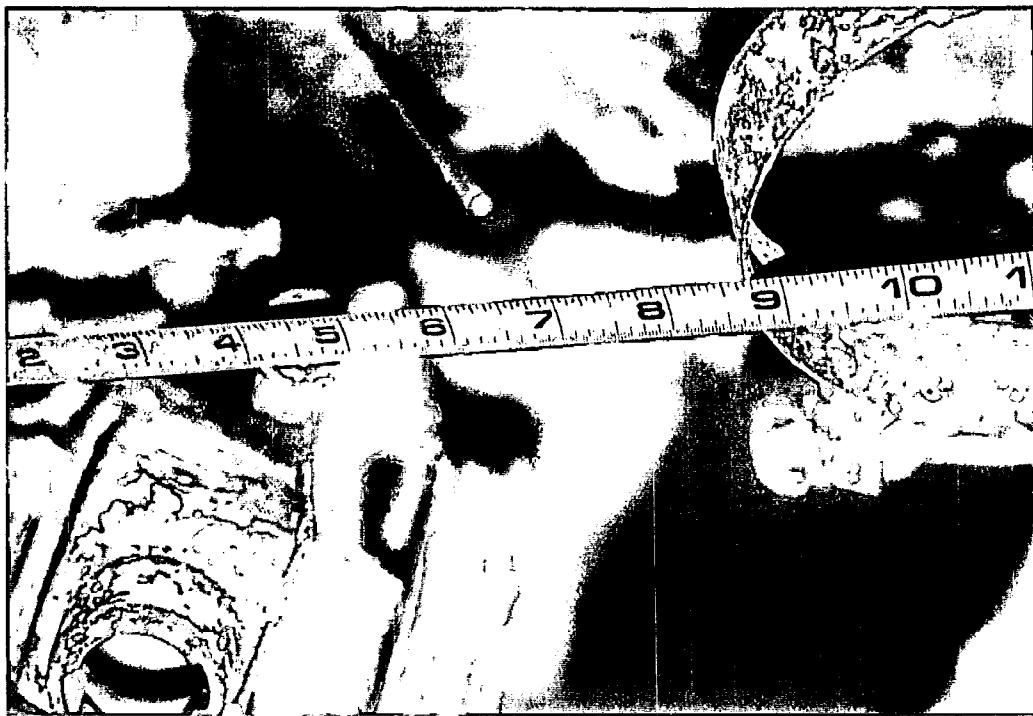


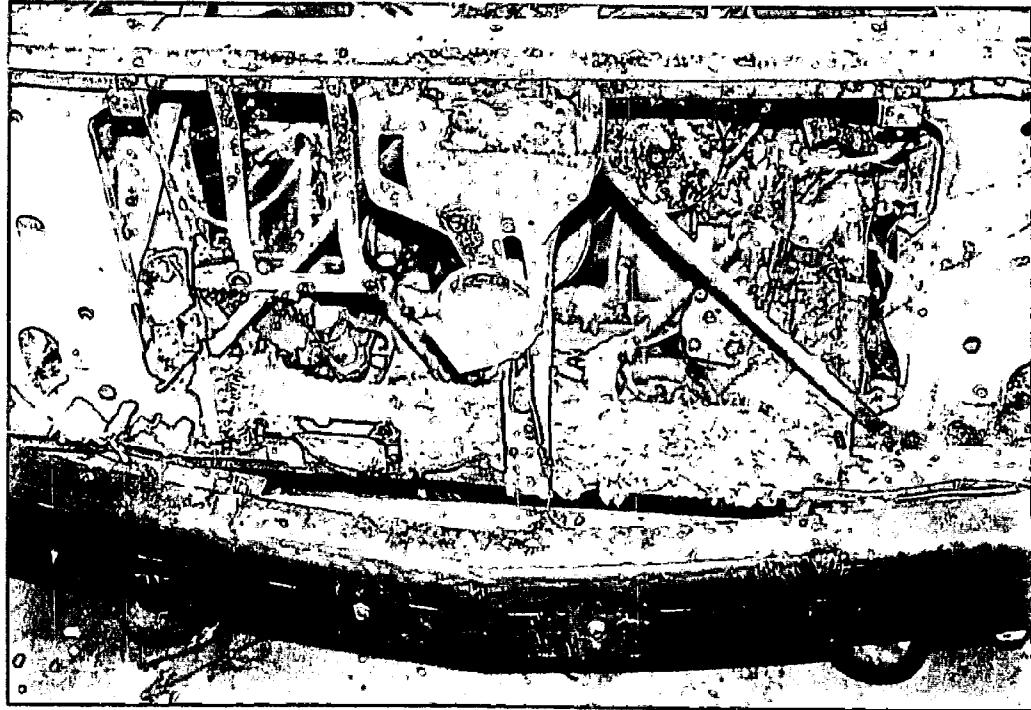


















CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Pre-Trial Statement
was served on the following via Federal Express, this 6th day of August, 2002.

David S. Meholic, Court Administrator
Clearfield County Court House
230 East Market Street
Clearfield, PA 16830

Kathleen S. McAllister, Esquire
DiBella & Geer, P.C.
322 Boulevard of the Allies
Pittsburgh, PA 15222



J0629611

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

ALLSTATE INSURANCE COMPANY,
As Subrogee to KEVIN B. TICE,

Plaintiff,

vs.

GENERAL MOTORS CORPORATION,

Defendant.

CIVIL DIVISION

No. 00-415-CD

POINTS FOR CHARGE

Filed on behalf of Defendant
General Motors Corporation

Counsel of Record for this Party:

Thomas J. Sweeney, Esq.
Pa. I.D. #34615
Melissa L. Lightcap, Esq.
Pa. I.D. #84787

Eckert Seamans Cherin & Mellott
Firm #075
44th Floor, 600 Grant Street
Pittsburgh, PA 15219
412-566-6000

Jury Trial Demanded

RECEIVED

AUG 07 2002

COURT ADMINISTRATOR'S
OFFICE

GENERAL MOTORS CORPORATION
PROPOSED POINTS FOR CHARGE

General Motors Corporation (“General Motors”), by and through its attorneys, Eckert Seamans Cherin & Mellott, LLC, respectfully requests the Court to instruct the jury as follows:

REQUEST FOR BINDING INSTRUCTIONS

1. Under the law and the facts of this case, your verdict must be for General Motors.

GRANTED _____ MODIFIED _____ DENIED _____

2. Based on the applicable law, you are hereby directed to return a verdict in favor of General Motors, based on the Allstate Insurance Company’s failure to establish a prima facie cause of action for strict liability.

GRANTED _____ MODIFIED _____ DENIED _____

3. Based on the applicable law, you are hereby directed to return a verdict in favor of General Motors, based on the Allstate Insurance Company’s failure to establish a prima facie cause of action for negligence.

GRANTED _____ MODIFIED _____ DENIED _____

4. Based on the applicable law, you are hereby directed to return a verdict in favor of General Motors based on the Allstate Insurance Company’s failure to establish a prima facie cause of action for breach of implied warranty of fitness and merchantability.

GRANTED _____ MODIFIED _____ DENIED _____

5. Based on all of the evidence which has been presented and the law which is applicable, you are directed to return a verdict in favor of General Motors because the Allstate Insurance Company has failed to establish the existence of a defect that was unreasonably dangerous in the 1997 Chevrolet K1500 Silverado Truck.

GRANTED _____ MODIFIED _____ DENIED _____

**INTRODUCTORY INSTRUCTIONS IF REQUEST FOR
BINDING INSTRUCTIONS IS DENIED**

6. You must reach your decision in accordance with the law and the evidence and without regard to your personal sympathies.

GRANTED _____ MODIFIED _____ DENIED _____

7. This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar situations in life. A corporation is entitled to the same fair trial at your hands as a private individual. The law does not favor individuals; all persons, including corporations stand equal before the law and are to be dealt with as equals in a court of justice. 3 Devitt & Blackmar, Federal Jury Practice and Instructions, § 71.04 (4th ed. 1987).

GRANTED _____ MODIFIED _____ DENIED _____

EVIDENCE

8. You are instructed that it is the duty of Allstate Insurance Company to prove its case by a preponderance of the evidence, and if you believe that the evidence considered as a whole is equally balanced or weighs or preponderates in favor of General Motors, then you must find for General Motors. You should not arrive at this conclusion merely from the number of witnesses who have testified on either side of the case. Rather, you must decide based upon the demeanor, character, reputation and/or credibility of the witnesses.

GRANTED _____ MODIFIED _____ DENIED _____

9. The burden is on Allstate Insurance Company in a civil action, such as this, to prove every essential element of their claim by a preponderance of the evidence. If the proof should fail to establish any essential element of Allstate Insurance Company's claim by a preponderance of the evidence in the case, the jury should find for General Motors.

GRANTED _____ MODIFIED _____ DENIED _____

10. You are solely responsible for judging the credibility of the witnesses and the weight their testimony deserves. You may be guided by the conduct of the witness, or by the manner in which the witness testifies, or by the character of the testimony given, or by the evidence contrary to the testimony given. You may also take into account the motive and state of mind of the witness. Additionally, you may consider and weigh a witness' testimony in relation to his/her ability to make accurate observations of the events or circumstances about which he/she is testifying. A witness' perception and ability to testify concerning certain events can be affected by the anxiety and stress of a particular situation, as well as by

injuries and trauma. You may also consider any relation that each witness may bear to either side in the case, the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness was either supported or contradicted by other evidence in this case. The phrase "other evidence" includes not only witness testimony, but also the physical evidence, including the diagrams and photographs of the truck.

GRANTED _____ MODIFIED _____ DENIED _____

11. You have heard testimony about evidence which has not been produced. Counsel for General Motors has argued that this evidence was in Allstate Insurance Company's control and would have proven facts material to the matter in controversy.

If you find that Allstate Insurance Company could have produced this evidence, and that the evidence was within its control, and that this evidence would have been material in deciding among the facts in dispute in this case, then you are permitted to infer that the evidence would have been helpful to General Motors and unfavorable to Allstate Insurance Company.

In deciding whether to draw this inference, you should consider whether the evidence not produced merely have duplicated other evidence already before you. You may also consider whether Allstate Insurance Company had a reason for not producing this evidence, which was explained to your satisfaction. Again, any inference you decide to draw should be based on all of the facts and circumstances in this case. Fed. Jury Instr. No. 75 - 7; Cromin v. Pittsburgh & Lake Erie R.R. Co., 327 F.2d 142, 148 (3d Cir. 1963).

GRANTED _____ MODIFIED _____ DENIED _____

12. All evidence which is shown by proven physical facts to be untrue must be rejected. Brett v. Philadelphia Transp. Co., 154 Pa. Super. 429, 36 A.2d 230 (1944).

GRANTED _____ MODIFIED _____ DENIED _____

13. You will recall that expert witnesses gave testimony in this case. A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation may give his opinion as an expert as to any matter which he is skilled. In determining the weight to be given to his opinion, you should consider the qualifications and reliability of the expert and the reasons given for his opinion. You are not bound by an expert's opinion merely because he is an expert; you may accept or reject it, as in the case of other witnesses. Give it the weight, if any, to which you deem it entitled. Pa. S.S.J.I. (Civ.) 5.30.

GRANTED _____ MODIFIED _____ DENIED _____

14. In general, the opinion of an expert has value only when you accept the facts upon which it is based. This is true whether the facts were assumed hypothetically by the expert, or whether they came from his personal knowledge, from some other proper source or from some combination of these. Pa. S.S.J.I. (Civ.) 5.31.

GRANTED _____ MODIFIED _____ DENIED _____

15. In resolving any conflict that may exist in the testimony of expert witnesses, you are allowed to weigh the opinion of one expert against that of any other. In doing this, you should consider the relative qualifications and reliability of the expert witness, as well as the reasons for each opinion and the facts upon which it is based. Pa. S.S.J.I. (Civ.) 5.33.

GRANTED _____ MODIFIED _____ DENIED _____

16. The opinion of an expert does not constitute proof of the existence of facts necessary to support his opinions. Houston v. Canon Bowl, Inc., 443 Pa. 383, 278 A.2d 908 (1971).

GRANTED _____ MODIFIED _____ DENIED _____

17. Evidence that a witness made an earlier statement inconsistent with his or her testimony at this trial may be considered by you in your evaluation of that witness' credibility. Evidence that a witness acted inconsistently with his or her testimony at trial may also be considered by you in your evaluation of his or her credibility. Walley v. Iraca, 360 Pa. Super. 436, 520 A.2d 886 (1987). See 3 Devitt & Blackmar, Federal Jury Practice and Instructions, § 73.04 (4th ed. 1987).

GRANTED _____ MODIFIED _____ DENIED _____

18. Evidence that the plaintiff made earlier statements inconsistent with his testimony at this trial may be considered by you not only in your evaluation of that party's credibility, but also as evidence of the truth of the contents of the statement bearing upon the facts. Pa. S.S.J.I. (Civ.) 2.21.

GRANTED _____ MODIFIED _____ DENIED _____

SUBSTANTIVE LAW

19. The mere happening of an accident is not proof nor does it establish the existence of a defective condition, unreasonably dangerous to the user or consumer in the 1997 Chevrolet K1500 Silverado truck. The burden is upon Allstate Insurance Company to prove and establish by a fair preponderance of the evidence that the truck , when manufactured by General Motors, was in fact in a defective condition unreasonably dangerous to the user or consumer. Winkler v. Seven Springs Farm, Inc., 240 Pa. Super. 641, 359 A.2d 440 (1976), aff'd, 477 Pa. 445, 384 A.2d 241 (1978); Restatement (Second) of Torts, Section 402A, Comment g.

GRANTED _____ MODIFIED _____ DENIED _____

20. Manufacturers such as General Motors are not liable for all accidents involving their products, and do not absolutely insure that no one will ever be injured while using them. A manufacturer is not required to use the safest possible design, and has no duty to sell an "accident proof" product. Under the law, General Motors is only required to manufacture a

car which is free from defective characteristics on the date of sale. Azzarello v. Black Brothers Co., 480 Pa. 547, 391 A.2d 1020 (1978).

GRANTED _____ MODIFIED _____ DENIED _____

21. The 1997 Chevrolet K1500 Silverado truck is not defective simply because it was involved in a fire. Moomey v. Massey Ferguson, Inc., 429 F.2d 1184 (10th Cir. 1970); 3 Devitt & Blackmar, Federal Jury Practice and Instructions, § 82.03 (4th ed. 1987).

GRANTED _____ MODIFIED _____ DENIED _____

22. An accident may be an accident in the true or literal sense of the word; that is, an unfortunate or tragic occurrence which occurred without anyone being to blame or at fault. If you conclude that this accident was such an occurrence, then you must find in favor of General Motors. Kenworthy v. Burghart, 241 Pa. Super. 267, 361 A.2d 335 (1976); Ridgeway Nat'l Bank vs. North American Van Lines, Inc., 326 F.2d 934 (3rd Cir. 1964).

GRANTED _____ MODIFIED _____ DENIED _____

23. General Motors is required to design a vehicle which is reasonably fit for ordinary purposes; this means that General Motors is not required to design an injury-proof product. Green v. Sanitary Scale Co., 296 F. Supp. 625 (E.D. Pa. 1969), vacated on other grounds, 431 F.2d 371 (3d Cir. 1970); Huddell v. Levin, 537 F.2d 726 (3d Cir. 1976); Jeng

v. Witters, 452 F. Supp. 1349 (M.D. Pa. 1978), aff'd sub nom., General Motors v. Cheng, 591 F.2d 1334 (3d Cir. 1979).

GRANTED _____ MODIFIED _____ DENIED _____

24. In this strict liability claim, Allstate Insurance Company alleges that its damages were caused by a defect in the 1997 Chevrolet K1500 Silverado truck. In order to prevail on this claim against General Motors, Allstate Insurance Company must prove by a preponderance of the evidence each of the following essential elements:

- A) That General Motors manufactured the product which was in a defective condition, unreasonably dangerous to the user or consumer;
- B) That the product reached Mr. Tice without substantial change from the condition in which it left General Motors possession; and
- C) That the defective condition in the product was the proximate or legal cause of Allstate Insurance Company's damages.

If you find that Allstate Insurance Company has established all three of these elements by a preponderance of the evidence, your verdict must be for Allstate Insurance Company. However, if you find that Allstate Insurance Company has failed to establish even one of these elements, your verdict must be for General Motors. Berkebile v. Brantley Helicopter Corp., 462 Pa. 83, 337 A.2d 893, 898 (1975).

GRANTED _____ MODIFIED _____ DENIED _____

25. Allstate Insurance Company must establish that the product in question was expected to and did reach Mr. Tice without substantial change in condition from the time it was manufactured by General Motors. In other words, the defect must have existed at the time of the original sale. A manufacturer is not responsible if it delivers the product in a safe condition but subsequent mishandling, alteration or other factors beyond its control cause the product to be defective. David v. Berwind Corp., 547 Pa. 260, 690 A.2d 186, 190 (1997). Bascelli v. Randy, Inc., 339 Pa. Super. 254, 488 A.2d 1110 (1985). See Restatement (Second) of Torts, § 402A, Comment g.

GRANTED _____ MODIFIED _____ DENIED _____

26. A manufacturer is strictly liable only if its product is expected to and does reach the user or consumer without substantial change from the condition in which it is sold. Thus, if you find from the evidence that the 1997 Chevrolet K1500 Silverado truck was substantially changed after it left the control of General Motors and that it was this change, rather than any defect in the product as marketed, that caused Allstate Insurance Company's damages, then you cannot find General Motors liable. Rooney v. Federal Press Co., 751 F.2d 140 (3rd Cir. 1984); Merriweather v. E.W. Bliss Co., 636 F.2d 42 (3d Cir. 1980).

GRANTED _____ MODIFIED _____ DENIED _____

27. In this case, Allstate Insurance Company alleges that the 1997 Chevrolet K1500 Silverado truck was defective. Under the law of Pennsylvania, a product is defective for product liability purposes if it lacks any element necessary to render it safe for its intended use, or contains any condition that makes it unsafe for its intended use. In determining

whether the 1997 Chevrolet K1500 Silverado truck was defective, you must decide whether the product left General Motors control lacking any element necessary to render it safe for its intended use or possessed any feature which rendered it unsafe. If you determine that the 1997 Chevrolet K1500 Silverado truck was safe for its ordinary and intended use, then you must return a verdict in favor of General Motors. Carrecter v. Colson Equip. Co., 346 Pa. Super 95, 499 A.2d 326 (1985); Kalik v. Allis-Chalmers Corp., 658 F. Supp. 631 (W.D. Pa. 1987); See Pa. S.S.J.I. (Civ.) 8.02.

GRANTED _____ MODIFIED _____ DENIED _____

28. To recover on a theory of strict products liability, Allstate Insurance Company has the burden of proving that its damages were proximately caused by a defect. Under the law, a defect in a product will be found to be a proximate or legal cause of the injuries where the defect was a substantial factor in bringing about the harm. A substantial factor is an actual, real factor, although the result may be unusual or unexpected, but it is not an imaginary or fanciful factor having no connection or only an insignificant connection with the accident. Berkebile v. Barrenly Helicopter Corp., 462 Pa. 83, 337 A.2d 893 (1975); David v. Broadway Maintenance Corp., 451 F. Supp. 877 (E.D. Pa. 1978); See Pa. S.S.J.I. (Civ.) 3.25.

GRANTED _____ MODIFIED _____ DENIED _____

29. You are instructed that Allstate Insurance Company is seeking recovery for a product that caused injury under a negligence theory. Therefore, Allstate Insurance Company must establish the elements required in any other negligence action. Allstate Insurance

Company is required to prove that General Motors was under a duty to exercise due care to prevent harm to them, that General Motors breached that obligation by conduct falling below the standard required of a reasonably prudent person in the same or similar circumstances, and that General Motors conduct was a proximate cause of the damages. Hannis v. Ashland State Gen. Hosp., 123 Pa. Commw. 390, 554 A.2d 574 (1989).

GRANTED _____ MODIFIED _____ DENIED _____

30. In considering whether the 1997 Chevrolet K1500 Silverado truck was defective at the time of sale, the law does not require that products, which are reasonably safe when manufactured, be made fool-proof by the addition of redundant safety devices. Bartkewicz v. Billinger, 432 Pa. 351, 247 A.2d 603 (1968); Rooney v. Federal Press Company, 751 F.2d 140 (3d Cir. 1984); Cardullo v. General Motors Corp., 378 F.Supp. 890 (E.D. Pa. 1974), *aff'd without opinions* 511 F.2d 1932 (3d Cir. 1975).

GRANTED _____ MODIFIED _____ DENIED _____

31. The law provides that a person has misused a product: (1) if he used it in a manner neither intended nor reasonably foreseeable by the supplier; or (2) if he continued to use the product after becoming aware of a defect; or (3) if he caused the product to be used without sufficient advice to the user. If you find from the greater weight of the evidence that the user of the product misused the product in any of these three ways, and if you also find that misuse was the cause of the damages, then your verdict must be for General Motors.

Gottfried v. American Can Company, 339 Pa.Super. 403, 489 A.2d 222 (1985), *overruled on*

other grounds by *Duchess v. Langston Corp.*, 564 Pa. 529, 769 A.2d 1131 (2001) and *Childers v. Power Line Equip.*, 452 Pa. Super. 94, 681 A.2d 201, 208 (1993).

GRANTED _____ MODIFIED _____ DENIED _____

32. A manufacturer, designer, or supplier of a product is entitled to assume that the product will only be used in its usual and intended manner. The manufacturer, designer or supplier is not required to insure against any extraordinary risks which may result because of an abnormal or unusual use of the product. Thus, if you find that Mr. Tice used General Motors' product in a strange or unusual manner, you cannot hold General Motors liable for Allstate Insurance Company's damages. Greiner v. Volkswagenwerk Aktiengesellschaft, 540 F.2d 85 (3d Cir. 1976); Bartkewicz v. Billinger, 432 Pa. 351, 247 A.2d 603 (1968).

Pennsylvania law obliges manufacturers to design safe products which will not cause harm except when used in a truly unforeseeable manner which is so extraordinary as to not have been reasonably foreseen by the manufacturer. Wieder v. Towmotor Corp., 568 F.Supp. 1058 (E.D. Pa. 1983).

GRANTED _____ MODIFIED _____ DENIED _____

33. General Motors claims that the misuse of the product caused the incident. A manufacturer or seller is entitled to expect a normal use of its product. You have a duty to determine whether Mr. Tice was using the product at the time of the incident in a manner that was reasonably foreseeable to the defendant. An unforeseeable use generally is one that a manufacturer cannot reasonably be expected to guard against in the design of its product.

Thus, even when a product is defective as designed for its ordinary and reasonable foreseeable use, if a use was made of the product that the maker could not reasonably be expected to guard against, or which was so reckless that Allstate Insurance Company would have been injured despite any curing of the alleged defect, then the accident was not proximately caused by the product defect.

Even if the misuse of a product is foreseeable, where the manufacturer has warned of the dangers of the misuse and Mr. Tice has misused it anyway, then the manufacturer cannot be liable for the resulting damages.

In this case, if General Motors shows by a preponderance of the evidence that an incident occurred because Mr. Tice used the product in a manner not foreseeable to the defendant by operating the product without proper maintenance, or by failing to abide by specific warnings, then you must find that even if a defect may have existed in the product, such defect did not cause the incident. Lewis v. Rego Company, 757 F.2d 66 (3d Cir. 1985), *citing Burch v. Sears, Roebuck and Company*, 320 Pa.Super. 444, 467 A.2d 615 (1983).

GRANTED _____ MODIFIED _____ DENIED _____

34. A plaintiff is barred from recovery if the damages are proximately caused by the plaintiff's own reckless conduct or misuse of the product. If Mr. Tice was reckless or misused the product so that he would have been injured despite the curing of any alleged defect, or his actions were so extraordinary and unforeseeable as to constitute a superseding cause, Allstate Insurance Company cannot recover. Sherk v. Daisy-Heddon, 498 Pa. 594, 450 A.2d 615, 618 (1982); Childers v. Power Line Equip., 452 Pa.Super. 94, 681 A.2d 201,

208 (1993); Burch v. Sears, Roebuck & Co., 320 Pa.Super. 444, 467 A.2d 615, 619 (1983);
Dillinger v. Caterpiller, Inc., 959 F.2d 430, 445-46 (3d Cir. 1992).

GRANTED _____ MODIFIED _____ DENIED _____

COMPENSATORY DAMAGES

35. The purpose of awarding damages in a civil case such as this is to fairly and reasonably compensate Allstate Insurance Company. The award should be limited to compensation, and compensation alone. Incollingo v. Ewing, 444 Pa. 263, 282 A.2d 206 (1971).

GRANTED _____ MODIFIED _____ DENIED _____

36. Any award of damages which you make in this case must be reasonable based on the evidence. You may not make an award which amounts to pure speculation. Pine v. Synkonis, 79 Pa. Commw. 479, 470 A.2d 1074 (1984).

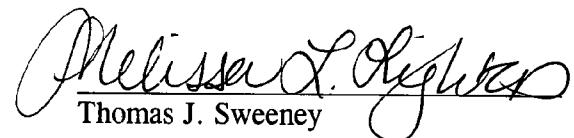
GRANTED _____ MODIFIED _____ DENIED _____

37. A claim for damages must be supported by a reasonable basis for calculation; your guess or speculation is not enough. Thus, you may not award damages to Allstate Insurance Company which are not based on any reasonable calculation. Mecca v. Lukasik, 366 Pa. Super. 149, 530 A.2d 1334 (1987).

GRANTED _____ MODIFIED _____ DENIED _____

Respectfully submitted,

ECKERT SEAMANS CHERIN &
MELLOTT, LLC



Thomas J. Sweeney
Pa. I.D. #34615
Melissa L. Lightcap
Pa. I.D. #84787

44th Floor, USX Tower
600 Grant Street
Pittsburgh, PA 15219
(412) 566-6000

Attorneys for Defendant
General Motors Corporation

Dated: August 6, 2002

J0649429

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Points for Charge was served on the following via Federal Express, this 6th day of August, 2002.

David S. Meholic, Court Administrator
Clearfield County Court House
230 East Market Street
Clearfield, PA 16830

Kathleen S. McAllister, Esquire
DiBella & Geer, P.C.
322 Boulevard of the Allies
Pittsburgh, PA 15222



(A)

ECKERT SEAMANS CHERIN & MELLOTT, LLC

U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
Telephone: 412.566.6000
Facsimile: 412.566.6099
www.escm.com

August 6, 2002

By Overnight Mail

Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Boston

Haddonfield, NJ

Harrisburg

Morgantown, WV

Philadelphia

Pittsburgh

Washington, D.C.

Re: Allstate Insurance Co. v. General Motors Corporation
Case No. 00-415-CD

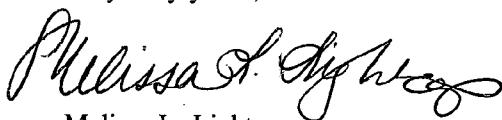
Dear Court Administrator:

Enclosed for filing is the original and one copy of General Motors Corporation's Pretrial Statement and General Motors Corporation's Points for Charge in the captioned matter.

Please return time-stamped copies of the enclosed cover pages to our office in the envelope provided.

Thank you for your assistance in this matter.

Very truly yours,



Melissa L. Lightcap

RECEIVED

AUG 07 2002

MLL/tm

**COURT ADMINISTRATOR'S
OFFICE**

Enclosures

c: Kathleen S. McAllister, Esq. (w/enc.)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALLSTATE INSURANCE COMPANY,
as Subrogee to KEVIN B. TICE,

Plaintiff,

vs.

GENERAL MOTORS CORPORATION,

Defendant.

CIVIL DIVISION

No. 00-415-CD

PRETRIAL STATEMENT

Filed on behalf of Plaintiff:

Counsel of Record for this Party:

KATHLEEN S. McALLISTER
PA ID NO 30764

DiBELLA & GEER, P.C.
Firm No. 099
322 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222
(412) 261-2900

RECEIVED

AUG 09 2002

COURT CLERK / REGISTRATORS
OFFICE

PRETRIAL STATEMENT

AND NOW, comes the Plaintiff, ALLSTATE INSURANCE COMPANY, as Subrogee to KEVIN B. TICE, by its attorneys, DiBella & Geer, P.C. and presents the following Pretrial Memorandum:

STATEMENT OF THE FACTS

This matter was initiated by Complaint filed by the Plaintiff, Allstate Insurance Company as subrogee to Kevin B. Tice, on or about April 6, 2000, on theories of negligence, breach of implied warranty of fitness and merchantability and strict liability under the Restatement of Torts (Second) Section 402A.

On or about March 19, 1999, a fire occurred in the engine compartment of the Plaintiff's vehicle, a 1997 Chevrolet Z71 pickup truck with VIN number 2GCEK19R3V1280872, as a result of a fuel leak from the vapor canister in the front of the engine compartment, which fire caused substantial damage to the vehicle and contents contained therein. As a result of the damages sustained by Kevin Tice to his vehicle and contents contained therein, an insurance claim was submitted to Allstate which claim was paid in accordance with the terms and conditions of the Allstate policy. The total amount of the claim paid to Kevin Tice by Allstate was in the amount of \$24,429.50. Under the terms and conditions of the Allstate policy, on payment of the claim submitted by Kevin Tice, Allstate became subrogated to any and all rights of Kevin Tice against General Motors for the fire damage of March 19, 1999.

UNUSUAL QUESTIONS OF LAW

None applicable.

LIST OF WITNESSES

At the time of trial, the Plaintiff may offer the testimony of the following witnesses:

1. Mr. Kevin B. Tice
RR #1, Box 599
Houtzdale, PA 16651
Liability/damage
2. Mr. Jeff Reams
RR #1
Houtzdale, PA 16651
Liability/damage
3. Mr. Alan Orringer
Automotive Enterprises
P.O. Box 720
Ingomar, PA 15127
(see attached report)
Liability/damage
4. Trooper Ager
Pennsylvania State Police
Woodland Barracks
Liability/damage
5. Trooper Green
Pennsylvania State Police
Woodland Barracks
Liability/damage

MEDICAL REPORTS

None applicable.

EXPERT REPORTS

See attached report of Alan Orringer.

STATEMENT OF DAMAGES

Damages are in the amount of \$24,429.50. See attached.

EXHIBITS

1. Photographs of vehicle from expert report
2. GM recall notice
3. Appraisal report for vehicle

PHOTOGRAPHS, PLANS OR PLOTS AS EVIDENCE

See above.

LENGTH OF TRIAL

Plaintiffs estimate the length of trial to be one day.

STIPULATIONS OR SPECIAL ARGUMENTS

None applicable.

RESERVATION OF RIGHTS

Plaintiff reserves the right to amend and supplement this Pretrial Statement at any time up to and including the time of trial and also reserves the right to offer rebuttal and/or impeachment evidence.

Respectfully submitted,

DiBELLA & GEER, P.C.

BY: Kathleen S. McAllister
KATHLEEN S. McALLISTER, ESQUIRE
Attorney for Plaintiff
Allstate Insurance Company as subrogee to
Kevin B. Tice

CERTIFICATE OF SERVICE

I, KATHLEEN S. McALLISTER, ESQUIRE, hereby certify that a true and correct copy of the foregoing PRETRIAL STATEMENT was mailed by first class mail, postage prepaid, this 7th day of August, 2002 upon the following:

Thomas J. Sweeney, Esquire
Eckert, Seamans, Cherin & Mellott
44th Floor, USX Tower
600 Grant Street
Pittsburgh, PA 15219

Kathleen S. McAllister

Kathleen S. McAllister, Esquire
Attorney for Plaintiff

VERIFICATION

I, KATHLEEN S. McALLISTER, ESQUIRE, Attorney for Plaintiff, certify that the factual statements contained in the foregoing PRETRIAL STATEMENT are true and correct to the best of my knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 P.C.S., Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

Date:

8/7/02

Kathleen S. McAllister
KATHLEEN S. McALLISTER, ESQUIRE
Attorney for Plaintiff

ALAN ORRINGER
AUTOMOTIVE ENTERPRISES
P.O. BOX 720
INGOMAR, PA. 15127-0720

ANALYSIS OF VEHICLE FIRE

INSURED : KEVIN B. TICE

CLAIM NO. : 6941318708

D/L : 22 MARCH 1999

MY FILE NO. : 99015



IDENTIFICATION OF VEHICLE

1997 CHEVROLET "Z71" PU, BLACK
VIN: 2GCEK19R3V1 280872 (as given)
V8, AT, AC, CC, PS, PB/ABS & 4X4
ODOMETER READING AND DATE OF ASSEMBLY: DESTROYED IN THE FIRE

PROCEDURE

The subject vehicle was examined and photographed by the undersigned on 30 March 1999 at COPART in Ellwood City, PA. The focus of this analysis was to identify the origin and cause of the fire that destroyed the subject vehicle. Prints of the pertinent photographs taken during my examination have been included with this report. Following my standard protocol, three samples of the fire debris from the interior of the subject vehicle were taken and ultimately send to a lab for analysis. A copy of that analysis report accompanies this report.

A search of all available recall and investigations databases showed that a single investigation, EA98024, existed. This investigation identified a failure in the fuel system on the subject vehicle. A copy of the document has been included with this report.

FINDINGS

PHOTO 1 shows the remains of the VIN (vehicle identification number) plate as found. Note that it is no longer legible. It was therefore necessary for me to rely on the identification of the subject vehicle made by the personnel at COPART.

PHOTOS 2 and 3 show two exterior views of the subject vehicle from the left and right front corners respectively. Note that the fire in the subject vehicle has consumed the areas normally damaged in a pickup truck fire. This burn pattern would consume the engine compartment and the interior, stopping just behind the cab on the vehicle. In this case the fire stopped just forward of the rear road wheels and tires. This is substantiated by the fact that the rear two-thirds of the pickup bed still contains the black finish that came on the vehicle. Also note that the two front tires have been consumed, but the two rear tires are still intact.

PHOTO 4 shows a view into the interior of the subject vehicle through the missing right side window. Note that the fire has heavily damaged the interior and that virtually all of the combustible materials have been consumed.

PHOTOS 5, 6 and 7 show three views of the engine compartment beginning on the passenger's side, traveling across the front center of the engine and ending on the driver's side. Note that a substantial amount of metal melting has taken place inside the engine compartment of the subject vehicle. Specifically, all of the brackets and components mounted onto the front of the engine have

been severely damaged. The air-conditioning compressor bracket is seen best pointed out by a red arrow in **PHOTO 6**. The bracket has sagged and the compressor is now facing the ground. The right side of the engine can be best in **PHOTO 5**, and the left side is seen in **PHOTO 7**. The amount of metal melting is noteworthy because the complete radiator and air-conditioning condenser assemblies have been completely consumed by the fire. This is seen best in **PHOTO 5** with the radiators mounted position pointed out by a red arrow in this photograph. The entire area where these components would be mounted is now empty and shows just a small amount of the remains of these two components lying on the bottom of the radiator support. I have also pointed out both the left exhaust manifold and a bracket positioned slightly further forward.

A closer view of the front of the engine can be seen in **PHOTO 8**. Again, you can see the air-conditioning condenser pointing down towards the ground in the top center of this photograph. The components surrounding it have also been heavily damaged. Note the location of the transmission filler tube and dipstick, pointed out by a red arrow in this photograph. Examination of the fluid showed that the fluid level was substantially lower than normal. However, the cooler lines having been consumed as well as the cooler tank itself having been damaged. (The cooler tank is mounted inside the tank of the radiator.

PHOTO 9 shows a closer view of the left side of the engine compartment. Again, note the level of metal melting that has taken place on this side of the engine. A close look at this area shows that the damage was somewhat more severe on the driver's side than it was on the passenger's side seen in the previous photograph. Also note the brake lines pointed out by a red arrow in this photograph. These lines were originally attached to the service brake master cylinder. However, the portion of the master

cylinder closest to the front of the vehicle has been consumed and only a small amount of the mounting portion of the master cylinder still remained in place.

PHOTO 10 shows a close view of the left front corner of the engine compartment with the power steering hoses in the center and towards the left in this photograph. Also note the bracket pointed out by a red arrow in this photograph. This bracket originally held the charcoal vapor canister for the subject vehicle. This is a device used for emission control by pulling the vapors out of various places on the vehicle and storing them until the system pulls them into the engine for consumption. This is of particular interest since the engineering analysis issued on the subject vehicle on November 1999 indicates a potential for a fuel leak from the charcoal vapor canister. The proximity of this canister to the left side exhaust manifold would certainly provide easy access for an ignition source of any fuel that might leak in this area. Now re-examine **PHOTO 7**. Note the proximity of the charcoal canister to the left exhaust manifold.

OPINION

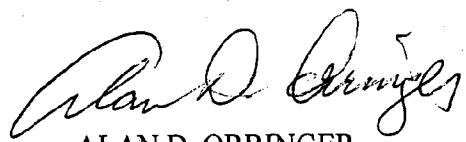
It is this examiner's opinion, with a reasonable degree of mechanical certainty, that the fire in the subject vehicle burned hottest across the front and top of the engine compartment. Penetration of the fire into the interior would have occurred in through two areas. One area was a small circular opening on the left side of the firewall and the other was a slightly larger rectangular opening towards the right side of the firewall. Given the hot spot of the fire in front of the engine, the damage across the top of the engine is in my opinion the result of the mushroom effect of the flames. The existence of EA98024 for 1997 CHEVROLET trucks indicates a potential for a fuel leak from the vapor canister. The fire in the subject vehicle is consistent with a fuel source and fire origin in the area at the front of the engine

KEVIN B. TICE
MY FILE NO. 99016

Page 5 of 5

compartment. Therefore, my opinion with the same degree of certainty already stated is that this fire was the result of fuel liberation from the vapor canister in the front of the engine compartment. It is therefore also my opinion, again with the same level of certainty, that the failure and fire in the subject vehicle are the responsibility of the vehicle manufacturer.

If additional facts relative to this matter are brought to my attention, I will be pleased to consider them in my analysis and my opinion.



ALAN D. ORRINGER
April 21, 1999



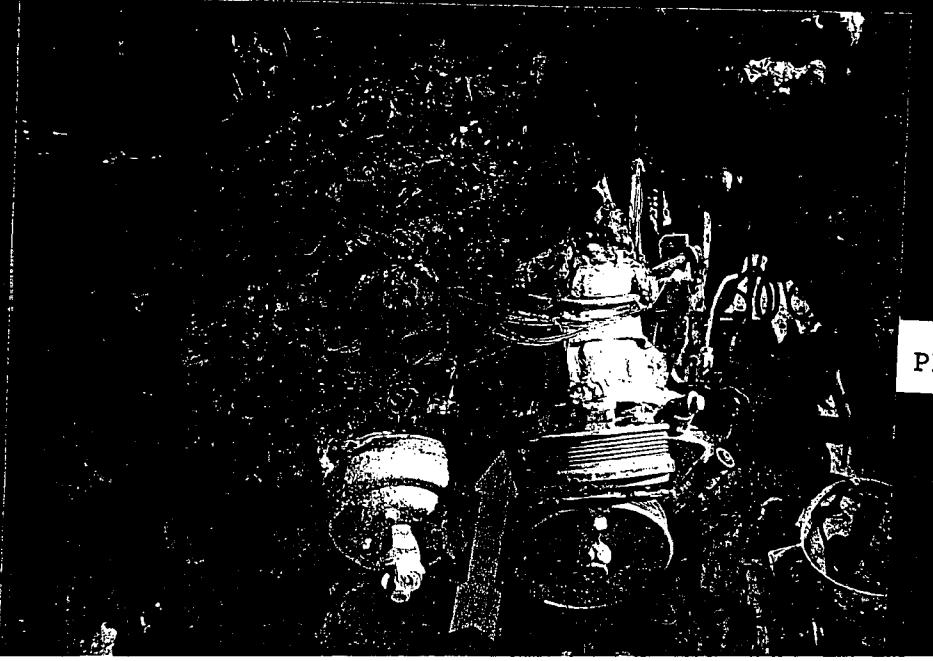
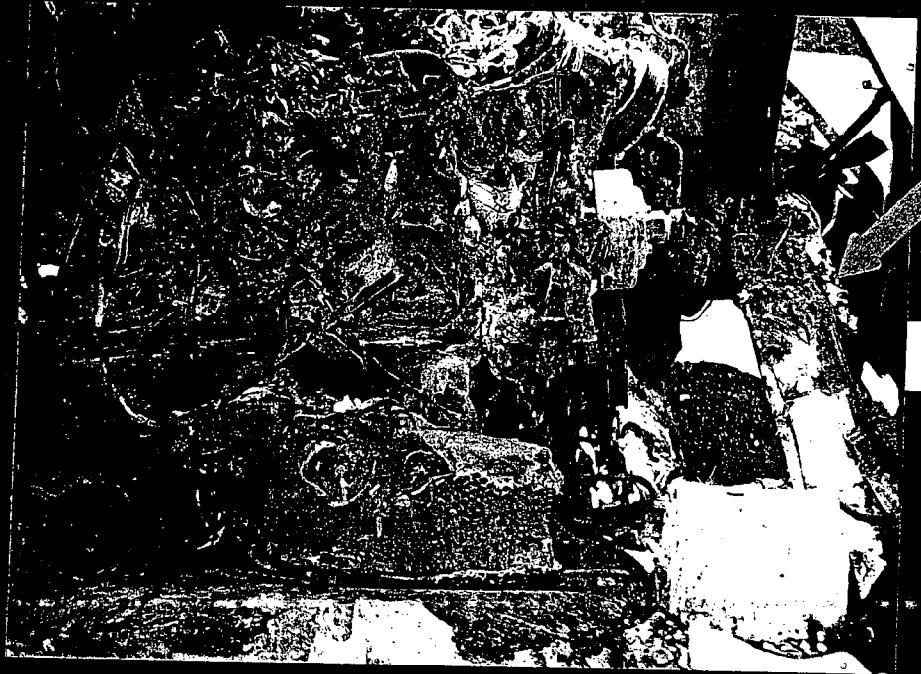
PHOTO 1



PHOTO 2



PHOTO 3



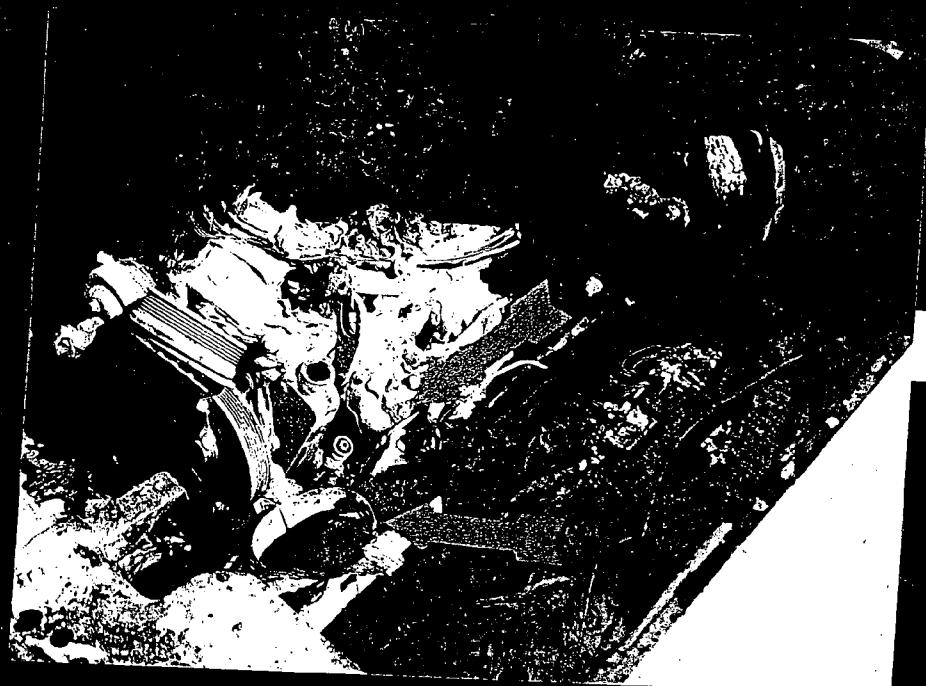




PHOTO 9



PHOTO 10

VALUATION DETAIL

97 CHEVROLET K1500 SILVERADO 4WD SHORT

The TYPICAL VEHICLE represents the average mileage, condition, equipment level and sales price of a vehicle of the same year, make, model, doors, edition, body and fuel type as the LOSS VEHICLE in your LOCAL MARKET.

Typical Vehicle	Loss Vehicle	Adjustments
VEHICLE DESCRIPTION		
City	Houtzdale	
Take Price	\$22,295	\$22,295
Year	1997	
Make	Chevrolet	
Model	K1500	
Edition	Silverado	
Door	2D	
Body	Ext Cab	
Drive	4WD	
Size	Short Bed	
Engine	8cyl Gasoline 5.7	0
Transmission	4 Speed Automatic	0
Color	Not Applicable	
Odometer	29,130 Mi (typical)	-340
EQUIPMENT		
CONVENIENCE OPTION		
Air Conditioning	Air Conditioning	
Tilt Steering Wheel	Tilt Steering Wheel	
Anti-Lock Brakes	Anti-Lock Brakes	
Cruise Control	Cruise Control	
	Rear Window Defroster	95
OTHER OPTIONAL EQU		
Intermittent Wipers	Intermittent Wipers	
Chrome Step Bumper	Chrome Step Bumper	
Digital Clock	Digital Clock	
Auto Locking Hubs (4WD)	Auto Locking Hubs (4WD)	255
Dual Air Bag Restraints	Dual Air Bag Restraints	
Leather Steering Wheel	3-5 Inch Lift Kit	810
Tachometer	Leather Steering Wheel	
Tinted Glass	Tachometer	
Tinted Glass	Tinted Glass	
POWER ACCESSORIES		
Power Brakes	Power Brakes	
Power Door Locks	Power Door Locks	
Power Steering	Power Steering	
Power Windows	Power Windows	
Power Mirrors	Power Mirrors	
RADIO/PHONE/ALARM		
AM/FM Stereo Tape	AM/FM Compact Disc Playr	30
SEAT OPTIONS		
Velour/Cloth Seats	Velour/Cloth Seats	

VALUATION DETAIL (CONTINUED)

97 CHEVROLET K1500 SILVERADO 4WD SHORT

	Typical Vehicle	Loss Vehicle	Adjustments
WHEEL OPTIONS		Bucket Seats	190
PACKAGES	Aluminum/Alloy Wheels Silverado Package	Chrome Wheels Silverado Package Z71 Off-Road Package	140 100
	Other Adjustment (See Valuation Notes):	\$240	\$240
	Value Before Condition Adjustments:		\$24,125
	Total Condition Adjustments (See Condition Adjustment Detail):		\$276
	Total Condition Adjusted Market Value:		\$24,401

VALUATION SUMMARY

97 CHEVROLET K1500 SILVERADO 4WD SHORT BED EXT CAB

	Typical Vehicle	Loss Vehicle	Adjustments
Take Price	\$22,295		\$22,295
Engine	8cyl Gasoline 5.7	8cyl Gasoline 5.7	
Transmission	4 Speed Automatic	4 Speed Automatic	
Odometer	29,130 Mi (typical)	34,000 Mi (actual)	-340
Equipment/Package Adjustment (See Valuation Detail)			1,930
Other Adjustment (See Valuation Notes)			240
ADP/AUTOSOURCE Value Before Condition Adjustments			\$24,125
Total Condition Adjustments (See Condition Adjustment Detail)			276
Total Condition Adjusted Market Value			\$24,401

Applicable Tax: LEASE%Title Fee: 28.50SUB TOTAL: 24,429.50Deductible: WAIVEDNET ADJUSTED VALUE: 24,429.50

Salvage/Other: _____

WARNING: The market value displayed
may not reflect the activity detected
by VINSOURCE and/or NICB research.
Please contact client services at
(800)351-3133 for review.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

AS

ALLSTATE INSURANCE COMPANY,
as Subrogee to KEVIN B. TICE,

CIVIL DIVISION

Plaintiff,

No. 00-415-CD

vs.

**PRAECIPE TO SETTLE
AND DISCONTINUE**

GENERAL MOTORS CORPORATION,

Defendant.

Filed on behalf of Plaintiff:

Counsel of Record for this Party:

KATHLEEN S. McALLISTER
PA ID NO 30764

DiBELLA & GEER, P.C.
Firm No. 099
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222
(412) 261-2900

FILED

SEP 06 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALLSTATE INSURANCE COMPANY,
as Subrogee to KEVIN B. TICE,
Plaintiff,

CIVIL DIVISION
No. 00-415-CD

vs.
GENERAL MOTORS CORPORATION,
Defendant.

PRAECIPE TO SETTLE AND DISCONTINUE

TO THE PROTHONOTARY:

KINDLY settle and discontinue the above captioned case.

Respectfully submitted,

DiBELLA & GEER, P.C.

By: Kathleen S. McAllister
Kathleen S. McAllister, Esquire
Attorney for Plaintiff

11

FILED NO
cc

11:44 AM
SEP 06 2002

William A. Shaw
Prothonotary
Certified to
Amy

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CIVIL DIVISION

Allstate Insurance Company, as
Subrogee to Kevin B. Tice

Vs.

No. 2000-00415-CD

General Motors Corporation

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on September 6, 2002 marked:

Settled and Discontinued

Record costs in the sum of \$100.00 have been paid in full by Kathleen S. McAllister, Esq. and costs in the sum of \$600.00 have been paid in full by Thomas J. Sweeney, Jr., Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 6th day of September A.D. 2002.

William A. Shaw, Prothonotary

ALAN D. ORRINGER
AUTOMOTIVE CONSULTANT
PO BOX 720
INGOMAR, PA. 15127-0720

RESUME/STATEMENT of QUALIFICATIONS

NAME: Alan D. Orringer

BIRTH DATE: 11 March 1947

FORMAL EDUCATION:

- 1965 Taylor Allderdice High School, Pittsburgh, Pa.
- 1965-67 Bethany College, Bethany WV. School of Fine arts (no degree)
- 1971-71 Community College of Allegheny County, Pittsburgh, Pa. School of Fine Arts (no degree)
- 1972-74 Rosedale Technical Institute, Pittsburgh, Pa. Graduate in Automotive & Light Truck Repair
- 1986 Kent State University, Kent, Ohio. Evidentiary Analysis of Traffic Accidents
- 1988 The Traffic Institute of Northwestern University, Certifies that I have successfully completed the Traffic Accident Reconstruction 1 course.
- 1988- Training to become a Member of the National Panel of Consumer Arbitrators followed by a Training update for arbitrators also conducted by the Better Business Bureau in 1993.

CONTINUING EDUCATION:

- 1986 Quail Video Productions Pittsburgh, Pa. Evidentiary Video Tape Production & Editing
- 1986 Attended and videotaped an Automobile Fire Cause Determination Seminar and field exercise held by the New Jersey Chapter of the International Association of Arson Investigators. The cooperating agencies were: Rutgers University, the State University of New Jersey, Bureau of Fire Safety, New

Ex 1

Jersey department of Community Affairs, Atlantic City Fire Department and The Monmouth county Fire Marshals office.

1987 Attended a Seminar presented by the Ohio Chapter of the International Association of Arson Investigators, and the National Automobile Theft Bureau. The topic was automobile theft and arson, followed by the demonstrative burning of several vehicles. I also videotaped these fires.

1986, 87 & 88 Attended a seminar at The Pennsylvania State university on Arson Detection. Held by the Pennsylvania Association of Arson Investigators, a chapter of the International Association of Arson Investigators University Park, Pennsylvania.

1989 Attended a Seminar presented by the Pennsylvania Association of Arson Investigators. The topics included Automobile Arson Investigation.

1990 Attended a two-day Seminar presented by Mr. Lee S. Cole, author of INVESTIGATION OF MOTOR VEHICLE FIRES, on a topic by the same name.

1995 Attended a two-day Seminar presented by Mr. Joseph SROGA and Mr. C. Thomas LUCIANI entitled TECHNIQUES in TOWING and RECOVERY.

1995 Attended a Seminar entitled BUMP for BUCKS presented by the Greater Pittsburgh Chapter of the I.A.S.I.U.

1996 Attended a Seminar entitled BUMP for BUCKS presented by the Greater Pittsburgh Chapter of the I.A.S.I.U.

PROFESSIONAL MEMBERSHIPS:

1984- Pennsylvania Association of Arson Investigators

1988- Member of the National Panel of Consumer Arbitrators (active), Volunteered as an arbitrator for the Better Business Bureaus' National consumer Arbitration Program and have to date heard five arbitration cases. In 1990, I became a technical expert used to determine the existence of or system involved in a particular complaint.

1993 Training update for arbitrators conducted by the Better Business Bureau. Remaining active.

1992- Member North Hills Historic Automobile club

1992- Member Pittsburgh Claims Association

2000- Member International Association of Auto Theft Investigators

CERTIFICATIONS:

1971 to Date Approved Driver Training Instructor, Commonwealth of Pennsylvania.

1974 to Date Approved State inspection Mechanic by the Commonwealth of Pennsylvania

1982 Certified Automobile Technician (passenger cars and light and medium duty trucks), National Institute for Automotive Service Excellence, Washington, DC.

1984 Certified Body Technician (painting and refinishing) National Institute for Automotive Service Excellence, Washington, DC.

1985 Certified Master body Technician, all tests completed

1986 Certified Master Automobile Technician (passenger cars and light and medium duty trucks) National Institute for Automotive Service Excellence, Washington, DC.

1987 The Traffic Institute, Northwestern University, certifies that a student that has successfully completed the Traffic Accident Reconstruction 1 course will be able to conduct traffic accident investigations beyond the level required in technical accident investigation. The use of physics, mathematical and engineering principles, as they apply to automobile accident reconstruction, was a significant part of this course.

1995 Certified by the Insurance Department Commissioner as a Physical Damage Appraiser, License number 3005518

1997 Certified by the Towing and Recovery Association of America as a NATIONALLY CERTIFIED TOW OPERATOR

PROFESSIONAL EXPERIENCE:

1970-71 Driver training instructor For Easy Method & Interstate Driving Schools Pittsburgh, PA.

1972-74 Apprentice Automotive Mechanic for Molognes Village Auto Repair, Pittsburgh, PA.

1974-75 Journeyman Automotive Mechanic Responsible for all types of general automotive diagnosis and repair. This included all automotive systems such as brakes, steering, electrical (engine and chassis), engine (tune-up through overhaul), transmissions (tune-up through overhaul), drive axles and instruments. Proficiency with all modern diagnostic tools as well as both gas and electric welding was mandatory.

1975-76 Manager of a Complete Automotive Service Station, Dicks Arco Service, Pittsburgh, Pa. including road service and towing equipment. Responsible for the total operation of the station, including but not limited to overseeing two journeyman mechanics and four road service and gasoline dispensing personnel. Responsible for Customer Relations and service order preparation. Responsible for maintenance of all road service and towing equipment. Auto body repair begun.

1976-80 Owner/Operator of Full Service Gasoline Station with road service and towing. Affiliate with the West Penn Motor Club. Responsible for all phases of the stations operation including recovery of vehicles from accident sites.

1980-84 Owner/Operator of an Independent Automotive Repair shop Including Auto Body and Fender repair with Towing and road service continuing. Responsible for all phases of the shop's operation including auto body repair and refinishing work. Road service and Towing remains a principal part of the operation, including recovery of vehicles from accident sites.

1984-1999 Continuing operation of Road Service and Towing as an affiliated West Penn Motor club (AAA) garage.

1984-1987 Appointed NIASE Certified Automotive Mechanic, voting member of the Chrysler Arbitration Board, Pittsburgh Zone. Responsible for examining and road testing customer vehicles to determine or confirm existence of complaint symptoms. Vote on response to be undertaken by order of the Arbitration Board.

1984- Consultant in Forensic Automotive Mechanics in association with Mr. J. E. DAVIDSON.

1992-94 Chosen as Co-Chairman of the JCC men's health club Pittsburgh, PA. Volunteered as a chairman for this organization to assist in directing health club activities.

TECHNICAL PRESENTATIONS:

- 1986 In Association with J. E. Davidson and Allstate Insurance Company, presented for the purposes of education the burning of three automobiles. I also supervised the video tape recording and editing of these fires.
- 1987 Presented a Seminar on Automobile Theft and Arson for State Farm Insurance Company Field Appraisers and Claims Personnel in conjunction with J. E. Davidson, and D. R. Depew. Again, my videotape was used as the basis for the presentation.
- 1987 Presented a Seminar on Automobile Theft and Arson for State Farm Insurance Company Field Appraisers and Claims Personnel in conjunction with J. E. Davidson, and D. R. Depew. Again, my videotape was used as the basis for the presentation.
- 1988 Presented Seminar on Automobile Theft and Arson at The Nationwide Insurance Company Claims College, in Butler, PA.
- 1991 Presented Seminar on Automobile Theft and Arson in conjunction with attorney Robert S. ADAMS at The Nationwide Insurance Company Claims College, in Butler, PA.
- 1992 Presented Seminar on the Identification of Fraudulent Automobile Thefts, to representatives of fifteen local police departments, at the request of the NATB, National Auto Theft Bureau.

Presented Seminar on the Identification of Fraudulent Claims to representatives of both the Chubb Group of Insurance Companies and State Farm Insurance.
- 1993 Presented Seminar on the Identification of Fraudulent Automobile Thefts, to representatives of the Northwest PA. Police Chiefs Association and Vernon Township Police Dept., at the Request of the NICB, National Insurance Crime Bureau.
- 1995 Presented Seminar on Automobile Theft and Arson, Mechanical defect identification and Unintended Acceleration to Nationwide Insurance Crime Bureau.
- 1996 Presented Seminar on the Identification of Fraudulent Automobile Thefts and Vehicle Arson to a group of Police Officers and Insurance Company

representatives at a Seminar Hosted by the Jefferson Borough Police Department in conjunction with the NICB, Nation Insurance Crime Bureau.

- 1999 Presented Seminar on Automobile Theft and Arson to Allstate Insurance Claims Representatives and Field Adjusters
- 2000 Presented Seminar on motor vehicle fires, arson fires and vehicle theft to the Members of the Pennsylvania Association of Arson Investigators

COURT EXPERIENCE:

As of January 2002, I have been successfully qualified to give expert testimony in several different jurisdictions within the Commonwealth of Pennsylvania as well as the States of West Virginia and Ohio. My appearances have been on behalf of both plaintiffs and defendants in civil trials, and the prosecution and defense in criminal trials. The total number of court appearances in 19 years is over 125, including three appearances in Federal Court for the Western District of Pennsylvania, sitting in both Erie and Pittsburgh, PA. To date I have testified on behalf of three automobile manufacturers.

To date, I have conducted in excess of 2,300 motor vehicle analyses.

In the course of my work, I have become generally familiar with the principals of both civil and criminal law.

All of the above statements are true and correct to the best of my knowledge and belief.

ALAN D. ORRINGER
31 JANUARY 2002



Office of Defects Investigation

Investigations Database

Call the **Auto Safety Hotline** toll free at (888) 327-4236 to report safety defects or to obtain information on cars, trucks, child seats, highway or traffic safety.

Report Date: April 20, 1999 09:19:47 AM

NHTSA Action Number: EA98024

Make: CHEVROLET TRUCK

Model: CHEVROLET TRUCK

Year: 1997

Component: FUEL:CARBURETION:INJECTORS:THROTTLE CONTROL AND
LINKAGE:EXHAUST

Manufacturer: GENERAL MOTORS CORP.

Date Investigation Opened: Tue, November 10, 1998

Date Investigation Closed:

NHTSA Recall Campaign Number:

Summary: FUEL LEAKS FROM THE VAPOR CANISTER

This search returned 1 record.

[New Search](#)

[Return to Safety Problems and Issues](#)



[Send mail to the Web Master](#)

Ex 2



Office of Defects Investigation

Defects Investigation Database

Call the _____ toll free at 1-888-DASH-2-DOT to report safety defects or to obtain information on cars, trucks, child seats, highway or traffic safety.

Report Date: May 20, 2002 12:00:45 PM

NOTE: Click the checkboxes in the first column to order more research on those records.

Search for records on

Year: 1997

Make: CHEVROLET TRUCK

Model: CHEVROLET TRUCK

Component: FUEL:CARBURETION:INJECTORS:THROTTLE CONTROL AND
LINKAGE:EXHAUST

Defect Investigations

1 Record(s) found

Check
to order
research.
Submit
below.

NHTSA Action Number: Make: CHEVROLET Model: CHEVROLET Year:
EA98024 TRUCK TRUCK 1997
Component: FUEL:CARBURETION:INJECTORS:THROTTLE CONTROL AND
LINKAGE:EXHAUST
Manufacturer: GENERAL MOTORS CORP.
Date Investigation Opened: Tue, November 10, 1998 Date Investigation Closed: Thu, April
20, 2000
NHTSA Recall Campaign Number: 00V110000
Summary:

FUEL LEAKS FROM THE VAPOR CANISTER

SUBMIT



Department
of Transportation
National Highway
Traffic Safety
Administration

ODI RESUME

GM-545-B
-JRP

INVESTIGATION: EA98-024
SUBJECT: Fuel leaks from the vapor canister
PROMPTED BY: TSB # 76-63-09
PRINCIPAL ENGINEER: Sonny Mupianka

DATE OPENED: 11-10-98
DATE CLOSED: 4-20-00

MANUFACTURER: General Motors Corporation (GM)
MODEL(S): Chevrolet and GMC G10-G30 panel and passenger vans Equipped with gasoline engines
MODEL YEAR(S): 1996-1997
VEHICLE POPULATION: 109,239 vans

PROBLEM DESCRIPTION: General Motors issued a technical service bulletin (Bulletin No. 76-63-09) describing conditions which may result in fuel leakage from the emission vapor canister. Apparently, when the subject vehicles are parked on an incline, with a full tank of gasoline, fuel can flow into the vapor canister. The remedy is to replace the vapor canister and both rollover valve assemblies, including associated piping.

FAILURE REPORT SUMMARY

	ODI	MANUFACTURER	TOTAL
COMPLAINTS:	1	141*	141
FIELD REPORTS:	0	61**	61
INJ CRASHES:	0	0	0
#INJURIES:	0	0	0
FAT CRASHES:	0	0	0
FIRE:	0	0	0
OTHER:	0	0	0

* Warranty claims, ** GM Field with no known duplicates

ACTION: This investigation is closed. GM has initiated a safety recall, NHTSA 00V-100, to address the subject of this investigation.

ENGINEER:

DIV CHF: Sonny Mupianka

OFC DIR:

4/20/00

4/20/00

4/20/00

SUMMARY: In January 1998, GM issued the technical service bulletin describing conditions which may result in fuel leakage from the emission vapor canister. According to the bulletin, when the subject vehicles are parked on an incline, with a full tank of gasoline, fuel can flow into the vapor canister. The remedy is to replace of the vapor canister, both rollover valve assemblies, and the associated piping.

In April 1998, ODI opened Service Query 98-005 to understand GM's rationale for issuance of a service bulletin on a matter that appeared to result in fuel leakage, an issue that is usually address by conducting a safety recall campaign. On November 10, 1998 the SQ was elevated to an Engineering Analysis (EA98-024) to investigate an alleged defect in the fuel tank rollover valve system in certain 1996 through 1997 Chevrolet Trucks and GMC Full Size G10-G30 panel and passenger vans.

D-4

04227102

Alleged Defect:

The alleged defect involved an improperly manufactured fuel tank in which the rollover valves could stick in the closed position and allow fuel to flow from the tank to the fuel vapor canister resulting in a fuel spillage from the tank and onto the ground. The affected vehicles were manufactured between September 27, 1995 and June 9, 1997, for a population of 109,239 vehicles.

Description of the Rollover Valves:

There are two rollover valves located on the top of the tank, one on both ends, with piping connecting them to the vapor canister. The valves are designed to vent fuel vapor out of the fuel tank to adjust pressure in the tank. The rollover operating features allow for positive and negative pressures internal to the fuel tank to vent to the vapor canister when necessary. Also, when the liquid fuel level rises above the float, the float will rise with the fuel and the flapper valve will seat inside the rollover valve, closing the valve. When the vehicle rolls over in a crash situation, the rollover valve is designed to close, preventing liquid fuel from flowing out of the fuel tank.

ODI Investigation:

During the course of NHTSA's investigation, ODI:

1. reviewed owner complaints, warranty data, and parts sales data obtained from GM;
2. contacted a sampling of owners, conducted field investigations and inspected vehicles;
3. reviewed and analyzed engineering documents obtained from GM;
4. compiled data and identified trends;
5. reviewed GM test data and design changes;
6. conducted testing on a complaint vehicle;
7. reviewed previous investigations on peer vehicles; and
8. reviewed updated warranty and consumer complaints to verify current fuel leak occurrences.

ODI randomly contacted a sampling of owners from field reports provided by GM to determine the consequences and circumstances surrounding their complaints. Owners surveyed by ODI reported that a large quantity of fuel had leaked or was leaking at the time of discovery from their vehicles. One owner reported losing over 1/4 tank of fuel while another owner reported that his vehicle was leaking at such a rate that neighbors reportedly summoned the fire department. One owner claimed that her van, which she recently filled with gas, was parked on a flat surface when it started leaking fuel. Another owner alleged that while his vehicle was parked on a slope, with the van facing downward, it started leaking fuel. In both cases it was a hot day, and the vehicles were recently filled with gas. Subsequently, all vehicles were repaired in accordance with the TSB issued by GM to remedy the fuel leak problem. These claims were verified by ODI after speaking to the GM dealer who did the repairs.

ODI's investigation indicates that as of March 28, 2000, a total of 141 warranty claims and 61 field reports and owner complaints were filed with GM alleging fuel leakage or fuel odor. This yields a failure rate of 119 complaints per 100,000 vehicles, based only on the warranty claims, excluding the field reports and owner complaints from the computation. Manufacturers with comparable failure rates have conducted safety recalls of similar fuel leak defect issues, in particular, there are two safety recalls campaigns, 95V-236 and 97V-199, that were both conducted by Chrysler and pertain to fuel tank rollover valve fuel leaks.

As of January 2000, GM was still receiving fuel leak complaints on the subject vehicle. Warranty data provided by GM, indicated that the rollover valve and fuel tanks were being replaced to resolve the leaking fuel issue.

ODI Testing:

ODI conducted testing to evaluate the fuel leakage problem and determine the contributing factor(s) that caused

the fuel leakage. The test parameters selected for ODI testing duplicated the rollover valve condition used by GM during their fuel leakage testing. GM removed the internal parts of the rollover valve prior to all testing. ODI did likewise.

Testing was conducted at the United States Army Aberdeen Test Center, located at the Aberdeen Proving Grounds, Aberdeen, Maryland. Each test performed by ODI at Aberdeen resulted in a significant fuel leak. Testing conducted by ODI confirmed a substantial fuel leak will occur when four conditions are met:

- (1) one or both of the rollover valves must malfunction;
- (2) a full fuel tank;
- (3) the van is parked on an incline of a few degrees-front lower than the rear; and
- (4) ambient temperature must be warmer than the fuel temperature.

When the fuel leak occurs, how fast the fuel leaks, and the amount of fuel leaked depends on the combination of these factors. If the vehicle has been recently fueled on a warm day, factors 2 and 4 are satisfied because the tank will be full and the fuel, coming from underground storage tanks, will be at cooler temperatures than ambient air.

ODI's Findings and conclusions:

On the basis of all available information, ODI believes that the fuel leakage caused by one or more dysfunctional rollover valve(s) in these vehicles does constitute a defect related to motor vehicle safety. The complaint and warranty data demonstrates that the rate is comparable to other similar fuel leak-related safety recalls. Fuel leak incidents lead to safety problems. Furthermore, ODI believes that failures will continue to occur on vehicles where the four contributing factors are satisfied: a dysfunctional rollover valve (valve stuck in an open position), fuel tank full of gasoline, vehicle parked on a downhill grade, and the difference in ambient temperature and fuel temperature.

ODI believes that GM's action to conduct a safety recall to notify all owners, purchasers, and dealers of the problem and to provide a free remedy for each of the subject vehicles appropriate. Therefore, this investigation is closed. The agency reserves the right to take further action on this matter if warranted by future circumstances.

Speedometer

Instrument Panel Cluster

Speedometer and Odometer

TRIP Odometer
The trip odometer can tell you how far your vehicle has been driven since you last set the trip odometer to zero. To reset the trip odometer, fully press the reset button located near the trip odometer readout. If the reset button is not fully pressed, the trip odometer may not go all the way back to zero. If it doesn't, you may have to press the reset button again to reset the readout to zero.

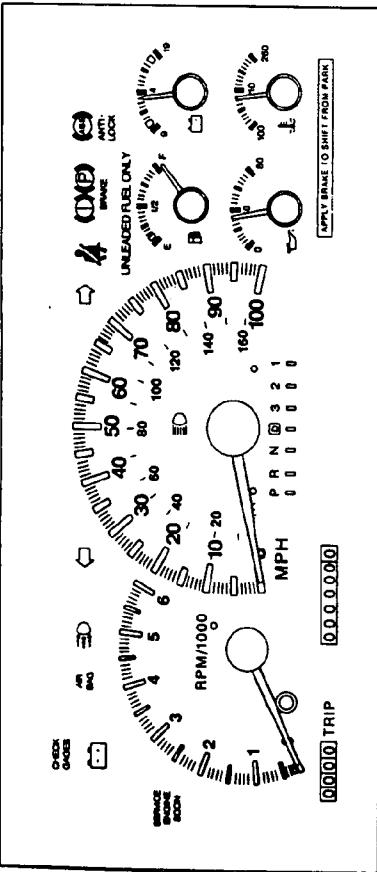
Tamper-Resistant Odometer

Your speedometer lets you see your speed in both miles per hour (mph) and kilometers per hour (km/h). Your odometer shows how far your vehicle has been driven, in either miles (used in the United States) or kilometers (used in Canada).

Tamper-Resistant Odometer
Your odometer is tamper-resistant. The odometer will show silver lines between the numbers if someone tries to turn it back.

You may wonder what happens if your vehicle needs a new odometer installed. If the new odometer can be set to the mileage total of the old odometer, then it must be. But if it can't, then it's set at zero, and a label must be put on the driver's door to show the old mileage reading when the new odometer was installed.

United States version shown, Canada similar.
Your instrument cluster is designed to let you know at a glance how your vehicle is running. You'll know how fast you're going, about how much fuel you have and many other things you'll need to know to drive safely and economically.



NOTICE:

03

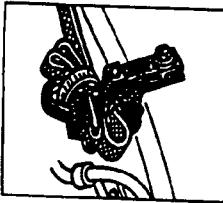
PRN

4. If the engine won't start, hold your key in the **START**. If it doesn't start in 10 seconds, push the accelerator pedal all the way down for five more seconds, or until it starts.

3. If your engine still won't start (or starts but then stops), wait 15 seconds and start over. When the engine starts, let go of the key and the accelerator pedal.

Engine Coolant Heater (Option)

In very cold weather, 0°F (-18°C) or colder, the engine coolant heater can help.



NOTICE:

Your engine is designed to work with the electronics in your vehicle. If you add electrical parts or accessories, you could change the way the engine operates. Before adding electrical equipment, check with your dealer. If you don't, your engine might not perform properly. If you ever have to have your vehicle towed, see the part of this manual that tells how to do it without damaging your vehicle. See "Towing Your Vehicle" in the Index.

To Use the Coolant Heater

1. Turn off the engine.
2. Open the hood and unwrap the electrical cord.
3. Plug it into a normal, grounded 110-volt AC outlet.

CAUTION:

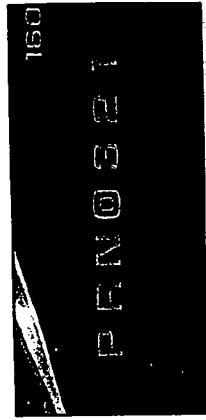
Plugging the cord into an ungrounded outlet could cause an electrical shock. Also, the wrong kind of extension cord could overheat and cause a fire. You could be seriously injured. Plug the cord into a properly grounded three-prong 110-volt AC outlet. If the cord won't reach, use a heavy-duty three-prong extension cord rated for at least 15 amps.

4. Before starting the engine, be sure to unplug and store the cord as it was before to keep it away from moving engine parts. If you don't, it could be damaged.

You'll get easier starting and better fuel economy during engine warm-up. Usually, the coolant heater should be plugged in a minimum of four hours prior to starting your vehicle.

How long should you keep the coolant heater plugged in? The answer depends on the outside temperature, the kind of oil you have, and some other things. Instead of trying to list everything here, we ask that you contact your GM dealer in the area where you'll be parking your vehicle. The dealer can give you the best advice for that particular area.

Automatic Transmission Operation



There are several different positions for your shift lever.

D-2

Electronic
Transfer Case

4-Wheel High (4H): This setting engages your front axle to help drive your vehicle. Use 4H when you need extra traction, such as on wet or icy roads, or in most off-road situations.

Neutral (N): Shift to this setting only when your vehicle needs to be towed or when using a power take-off.

4-Wheel Low (4L): This setting also engages your front axle to give you extra power and also gives you a higher driveline ratio. It should be used only for off-road driving. You can shift from 2-WHEEL HIGH (2H) to 4-WHEEL HIGH (4H) or from 4-WHEEL HIGH (4H) to 2-WHEEL HIGH (2H) while the vehicle is moving. Your front axle will engage faster if you take your foot off of the accelerator for a few seconds after you shift. In extremely cold weather, it may be necessary to stop or slow the vehicle to shift into 4-WHEEL HIGH (4H).

To shift into or out of 4-WHEEL LOW (4L) or NEUTRAL (N):

- Slow the vehicle to a roll, about 1 to 3 mph (2 to 5 km/h) and shift an automatic transmission into NEUTRAL (N), or with a manual transmission, press the clutch pedal.
- Shift the transfer case shift lever in one continuous motion.

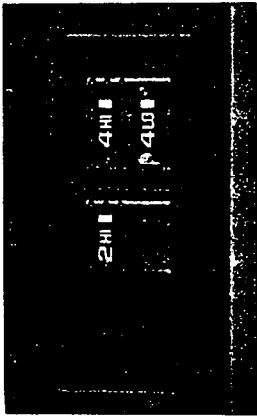
Don't pause in NEUTRAL (N) as you shift the transfer case into 4-WHEEL LOW (4L), or your gears could clash.

Remember that driving in 4-WHEEL HIGH (4H) or 4-WHEEL LOW (4L) may reduce fuel economy. Also, driving in four-wheel drive on dry pavement could cause your tires to wear faster and make your transfer case harder to shift and run noisier.

When your headlamps or parking lamps are on, rotate the thumb wheel next to the headlamp switch up to brighten or down to dim your transfer case indicator light.

If your four-wheel-drive vehicle has the electronic transfer case, the transfer case switches are below and to the left of the climate control system.

Use these switches to shift into and out of four-wheel drive. You can choose among three driving settings:



Electronic Transfer Case (If Equipped)

2HI: This setting is for driving in most street and highway situations. Your front axle is not engaged in two-wheel drive.

4HI: This setting engages your front axle to help drive your vehicle. Use 4HI when you need extra traction, such as on snowy or icy roads, or in most off-road situations.

4LO: This setting also engages your front axle to give you extra traction. You may never need 4LO. It sends the maximum power to all four wheels. You might choose 4LO if you were driving off-road in sand, mud or deep snow and climbing or descending steep hills. Indicator lights in the switches show you which setting you are in. The indicator lights will come on briefly when you turn on the ignition and the last chosen setting will stay on. If the lights do not come on, you should take your vehicle in for service. An indicator light will flash while shifting. It will remain illuminated when the shift is completed. If for some reason the transfer cannot make a requested shift, it will return to the last chosen setting.

DiBELLA & GEER, P.C.
Attorneys At Law

312 Boulevard of the Allies
Third Floor
Pittsburgh, Pennsylvania 15222
Telephone: 412-261-2900
FAX: 412-261-3222

Avery C. Jakela

Arb-5-21-02 - 1:00 pm

April 30, 2002

Mary

~~Prothonotary
Clearfield County
P.O. Box 549
Clearfield, PA 16830~~

RE: Allstate Insurance Company, as subrogee to
Kevin B. Tice v. General Motors Corporation
No. 00 - 415 CD

Dear Sir/Madam:

Enclosed for filing is Plaintiff's Pretrial Memorandum in the above-captioned case. Also, enclosed is a copy of the coversheet to be date stamped and returned to me in the enclosed self-addressed, stamped envelope. Thank you.

Very truly yours,

Avery Jakela
AVERY C. JAKELA, Paralegal

ACJ/jat

Enclosures

cc: Thomas J. Sweeney, Esquire

RECEIVED

MAY 01 2002

**COURT ADMINISTRATORS
OFFICE**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALLSTATE INSURANCE COMPANY,
as Subrogee to KEVIN B. TICE,

Plaintiff,

vs.

GENERAL MOTORS CORPORATION,

Defendant.

CIVIL DIVISION

No. 00-415-CD

PRETRIAL MEMORANDUM

Filed on behalf of Plaintiff:

Counsel of Record for this Party:

KATHLEEN S. McALLISTER
PA ID NO 30764

DiBELLA & GEER, P.C.
Firm No. 099
322 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222
(412) 261-2900

RECEIVED

MAY 01 2002

**COURT ADMINISTRATOR'S
OFFICE**

PRETRIAL MEMORANDUM

AND NOW, comes the Plaintiff, ALLSTATE INSURANCE COMPANY, as Subrogee to KEVIN B. TICE, by its attorneys, DiBella & Geer, P.C. and presents the following Pretrial Memorandum:

STATEMENT OF THE CASE

This matter was initiated by Complaint filed by the Plaintiff, Allstate Insurance Company as subrogee to Kevin B. Tice, on or about April 6, 2000, on theories of negligence, breach of implied warranty of fitness and merchantability and strict liability under the Restatement of Torts (Second) Section 402A.

On or about March 19, 1999, a fire occurred in the engine compartment of the Plaintiff's vehicle, a 1997 Chevrolet Z71 pickup truck with VIN number 2GCEK19R3V1280872, as a result of a fuel leak from the vapor canister in the front of the engine compartment, which fire caused substantial damage to the vehicle and contents contained therein. As a result of the damages sustained by Kevin Tice to his vehicle and contents contained therein, an insurance claim was submitted to Allstate which claim was paid in accordance with the terms and conditions of the Allstate policy. The total amount of the claim paid to Kevin Tice by Allstate was in the amount of \$24,429.50. Under the terms and conditions of the Allstate policy, on payment of the claim submitted by Kevin Tice, Allstate became subrogated to any and all rights of Kevin Tice against General Motors for the fire damage of March 19, 1999.

CASE/STATUTE CITATION

None applicable.

LIST OF WITNESSES

At the time of trial, the Plaintiff may offer the testimony of the following witnesses:

1. Mr. Kevin B. Tice
RR #1, Box 599
Houtzdale, PA 16651
2. Mr. Jeff Reams
RR #1
Houtzdale, PA 16651
3. Mr. Alan Orringer
Automotive Enterprises
P.O. Box 720
Ingomar, PA 15127
(see attached report)
4. Trooper Ager
Pennsylvania State Police
Woodland Barracks
5. Trooper Green
Pennsylvania State Police
Woodland Barracks

STATEMENT OF DAMAGES

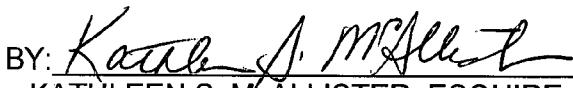
Damages are in the amount of \$24,429.50. See attached.

RESERVATION OF RIGHTS

Plaintiff reserves the right to amend and supplement this Pretrial Statement at any time up to and including the time of trial and also reserves the right to offer rebuttal and/or impeachment evidence.

Respectfully submitted,

DiBELLA & GEER, P.C.

BY: 
KATHLEEN S. McALLISTER, ESQUIRE
Attorney for Plaintiff
Allstate Insurance Company as subrogee to
Kevin B. Tice

VERIFICATION

I, KATHLEEN S. McALLISTER, ESQUIRE, Attorney for Plaintiff, certify that the factual statements contained in the foregoing PRETRIAL MEMORANDUM are true and correct to the best of my knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 P.C.S., Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

Date: 4/30/02


Kathleen S. McAllister
KATHLEEN S. McALLISTER, ESQUIRE
Attorney for Plaintiff

ALAN ORRINGER
AUTOMOTIVE ENTERPRISES
P.O. BOX 720
INGOMAR, PA. 15127-0720

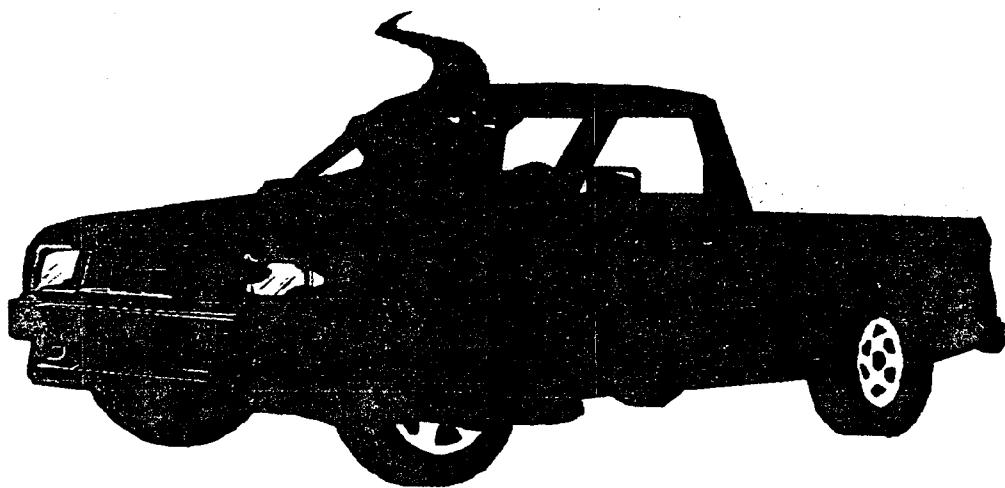
ANALYSIS OF VEHICLE FIRE

INSURED : KEVIN B. TICE

CLAIM NO. : 6941318708

D/L : 22 MARCH 1999

MY FILE NO. : 99015



IDENTIFICATION OF VEHICLE

1997 CHEVROLET "Z71" PU, BLACK

VIN: 2GCEK19R3V1 280872 (as given)

V8, AT, AC, CC, PS, PB/ABS & 4X4

ODOMETER READING AND DATE OF ASSEMBLY: DESTROYED IN THE FIRE

PROCEDURE

The subject vehicle was examined and photographed by the undersigned on 30 March 1999 at COPART in Ellwood City, PA. The focus of this analysis was to identify the origin and cause of the fire that destroyed the subject vehicle. Prints of the pertinent photographs taken during my examination have been included with this report. Following my standard protocol, three samples of the fire debris from the interior of the subject vehicle were taken and ultimately send to a lab for analysis. A copy of that analysis report accompanies this report.

A search of all available recall and investigations databases showed that a single investigation, EA98024, existed. This investigation identified a failure in the fuel system on the subject vehicle. A copy of the document has been included with this report.

FINDINGS

PHOTO 1 shows the remains of the VIN (vehicle identification number) plate as found. Note that it is no longer legible. It was therefore necessary for me to rely on the identification of the subject vehicle made by the personnel at COPART.

PHOTOS 2 and 3 show two exterior views of the subject vehicle from the left and right front corners respectively. Note that the fire in the subject vehicle has consumed the areas normally damaged in a pickup truck fire. This burn pattern would consume the engine compartment and the interior, stopping just behind the cab on the vehicle. In this case the fire stopped just forward of the rear road wheels and tires. This is substantiated by the fact that the rear two-thirds of the pickup bed still contains the black finish that came on the vehicle. Also note that the two front tires have been consumed, but the two rear tires are still intact.

PHOTO 4 shows a view into the interior of the subject vehicle through the missing right side window. Note that the fire has heavily damaged the interior and that virtually all of the combustible materials have been consumed.

PHOTOS 5, 6 and 7 show three views of the engine compartment beginning on the passenger's side, traveling across the front center of the engine and ending on the driver's side. Note that a substantial amount of metal melting has taken place inside the engine compartment of the subject vehicle. Specifically, all of the brackets and components mounted onto the front of the engine have

been severely damaged. The air-conditioning compressor bracket is seen best pointed out by a red arrow in **PHOTO 6**. The bracket has sagged and the compressor is now facing the ground. The right side of the engine can be best in **PHOTO 5**, and the left side is seen in **PHOTO 7**. The amount of metal melting is noteworthy because the complete radiator and air-conditioning condenser assemblies have been completely consumed by the fire. This is seen best in **PHOTO 5** with the radiators mounted position pointed out by a red arrow in this photograph. The entire area where these components would be mounted is now empty and shows just a small amount of the remains of these two components lying on the bottom of the radiator support. I have also pointed out both the left exhaust manifold and a bracket positioned slightly further forward.

A closer view of the front of the engine can be seen in **PHOTO 8**. Again, you can see the air-conditioning condenser pointing down towards the ground in the top center of this photograph. The components surrounding it have also been heavily damaged. Note the location of the transmission filler tube and dipstick, pointed out by a red arrow in this photograph. Examination of the fluid showed that the fluid level was substantially lower than normal. However, the cooler lines having been consumed as well as the cooler tank itself having been damaged. (The cooler tank is mounted inside the tank of the radiator.

PHOTO 9 shows a closer view of the left side of the engine compartment. Again, note the level of metal melting that has taken place on this side of the engine. A close look at this area shows that the damage was somewhat more severe on the driver's side than it was on the passenger's side seen in the previous photograph. Also note the brake lines pointed out by a red arrow in this photograph. These lines were originally attached to the service brake master cylinder. However, the portion of the master

cylinder closest to the front of the vehicle has been consumed and only a small amount of the mounting portion of the master cylinder still remained in place.

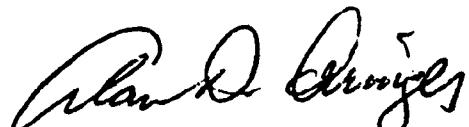
PHOTO 10 shows a close view of the left front corner of the engine compartment with the power steering hoses in the center and towards the left in this photograph. Also note the bracket pointed out by a red arrow in this photograph. This bracket originally held the charcoal vapor canister for the subject vehicle. This is a device used for emission control by pulling the vapors out of various places on the vehicle and storing them until the system pulls them into the engine for consumption. This is of particular interest since the engineering analysis issued on the subject vehicle on November 1999 indicates a potential for a fuel leak from the charcoal vapor canister. The proximity of this canister to the left side exhaust manifold would certainly provide easy access for an ignition source of any fuel that might leak in this area. Now re-examine **PHOTO 7**. Note the proximity of the charcoal canister to the left exhaust manifold.

OPINION

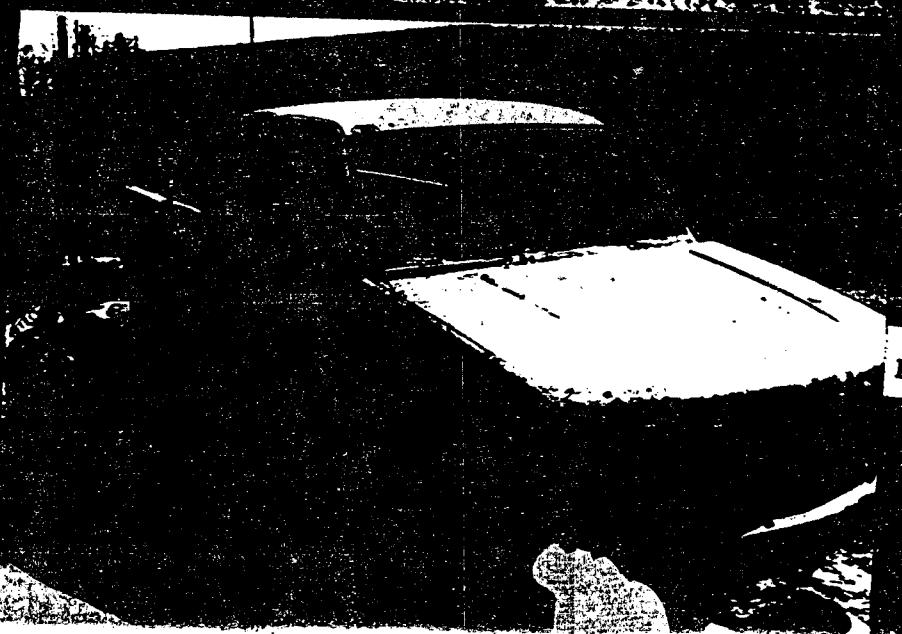
It is this examiner's opinion, with a reasonable degree of mechanical certainty, that the fire in the subject vehicle burned hottest across the front and top of the engine compartment. Penetration of the fire into the interior would have occurred in through two areas. One area was a small circular opening on the left side of the firewall and the other was a slightly larger rectangular opening towards the right side of the firewall. Given the hot spot of the fire in front of the engine, the damage across the top of the engine is in my opinion the result of the mushroom effect of the flames. The existence of EA98024 for 1997 CHEVROLET trucks indicates a potential for a fuel leak from the vapor canister. The fire in the subject vehicle is consistent with a fuel source and fire origin in the area at the front of the engine

compartment. Therefore, my opinion with the same degree of certainty already stated is that this fire was the result of fuel liberation from the vapor canister in the front of the engine compartment. It is therefore also my opinion, again with the same level of certainty, that the failure and fire in the subject vehicle are the responsibility of the vehicle manufacturer.

If additional facts relative to this matter are brought to my attention, I will be pleased to consider them in my analysis and my opinion.



ALAN D. ORRINGER
April 21, 1999



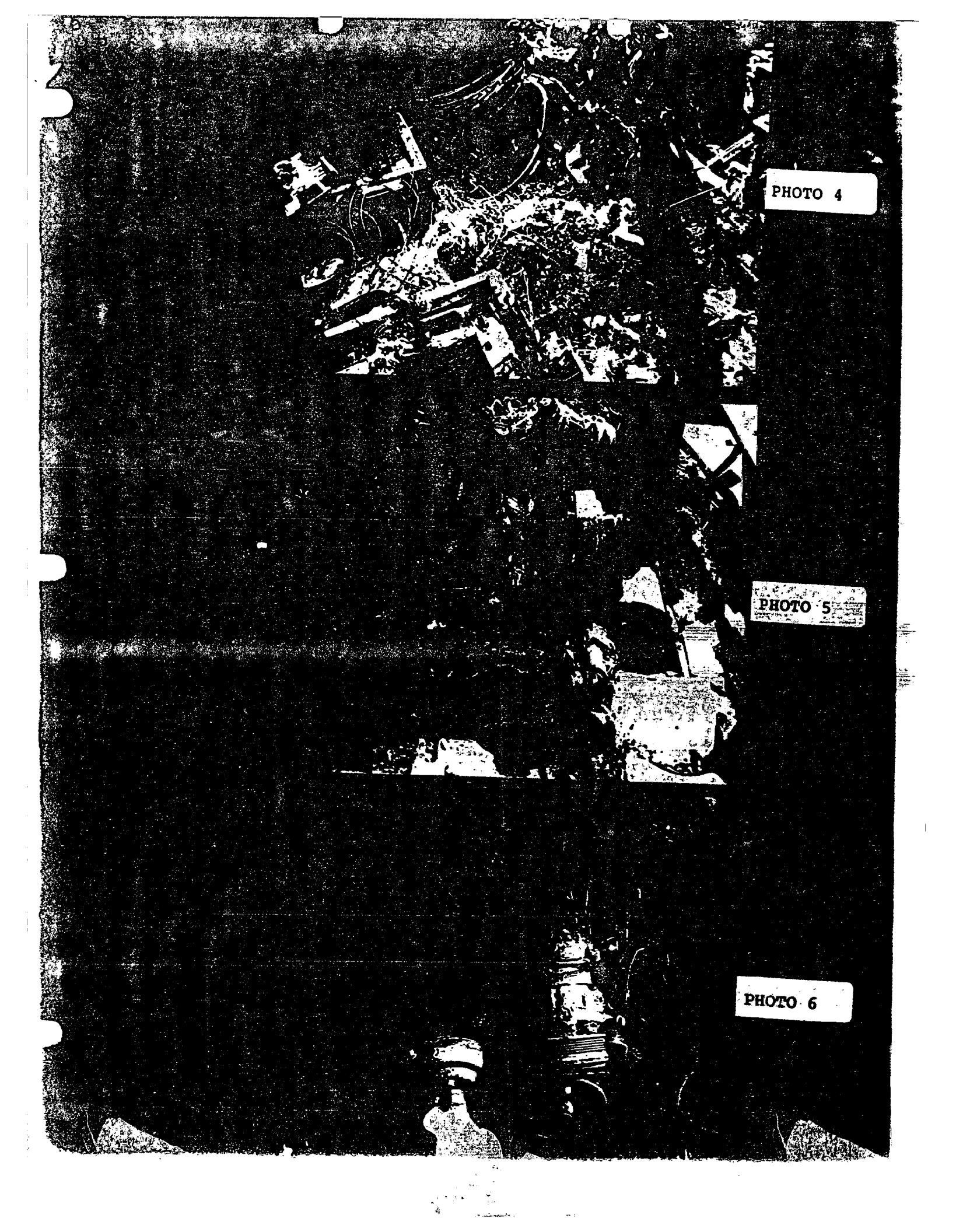


PHOTO 4

PHOTO 5

PHOTO 6

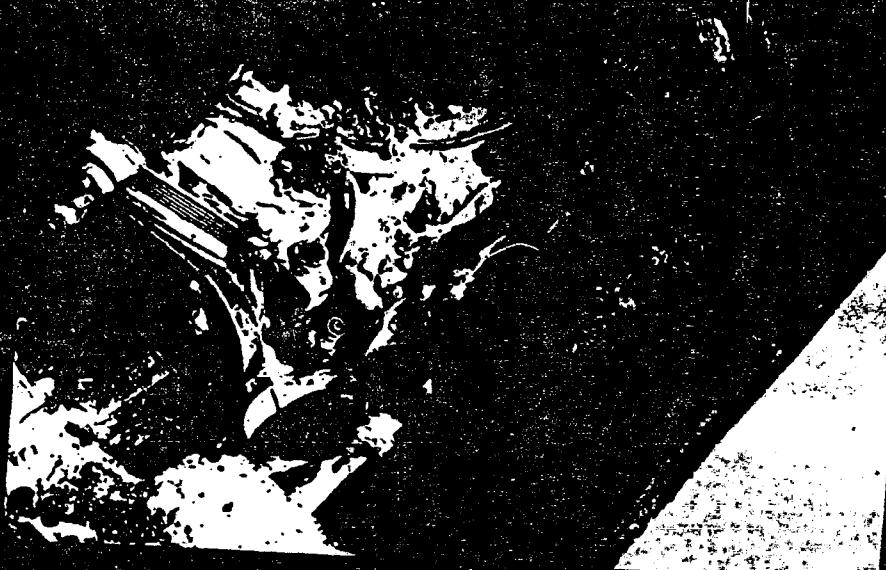


PHOTO 7



PHOTO 8

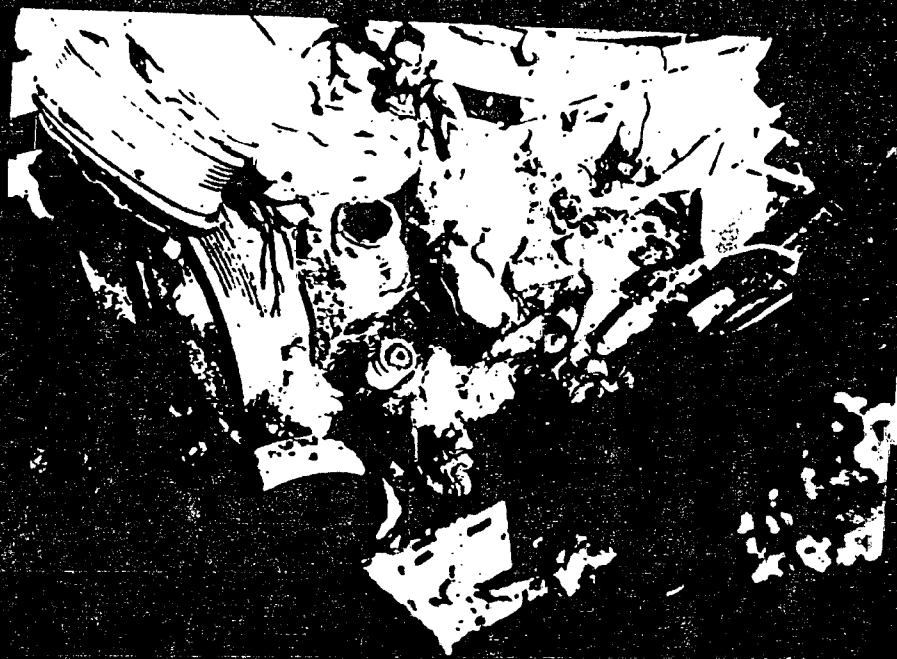


PHOTO 9

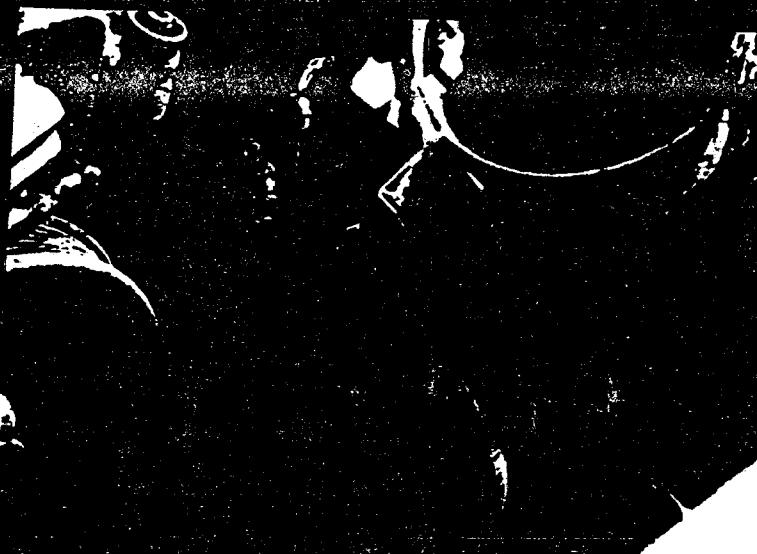


PHOTO 10

VALUATION DETAIL

97 CHEVROLET K1500 SILVERADO 4WD SHORT

The TYPICAL VEHICLE represents the average mileage, condition, equipment level and sales price of a vehicle of the same year, make, model, doors, edition, body and fuel type as the LOSS VEHICLE in your LOCAL MARKET.

	Typical Vehicle	Loss Vehicle	Adjustments
VEHICLE DESCRIPTION			
City	Houtzdale	Houtzdale	
Take Price	\$22,295		\$22,295
Year	1997	1997	
Make	Chevrolet	Chevrolet	
Model	K1500	K1500	
Edition	Silverado	Silverado	
Door	2D	2D	
Body	Ext Cab	Ext Cab	
Drive	4WD	4WD	
Size	Short Bed	Short Bed	
Engine	8cyl Gasoline 5.7	8cyl Gasoline 5.7	0
Transmission	4 Speed Automatic	4 Speed Automatic	0
Color	Not Applicable	Unknown	
Odometer	29,130 Mi (typical)	34,000 Mi (actual)	-340
EQUIPMENT			
CONVENIENCE OPTION			
Air Conditioning	Air Conditioning		
Tilt Steering Wheel	Tilt Steering Wheel		
Anti-Lock Brakes	Anti-Lock Brakes		
Cruise Control	Cruise Control		
	Rear Window Defroster		95
OTHER OPTIONAL EQU			
Intermittent Wipers	Bed-Liner		135
Chrome Step Bumper	Nerf Bars		150
Digital Clock	Bug Shield		25
Auto Locking Hubs (4WD)	Intermittent Wipers		
Dual Air Bag Restraints	Chrome Step Bumper		
Leather Steering Wheel	Digital Clock		
Tachometer	Hinged Third Door (PU)		255
Tinted Glass	Auto Locking Hubs (4WD)		
	Dual Air Bag Restraints		
	3-5 Inch Lift Kit		810
	Leather Steering Wheel		
	Tachometer		
	Tinted Glass		
POWER ACCESSORIES			
Power Brakes	Power Brakes		
Power Door Locks	Power Door Locks		
Power Steering	Power Steering		
Power Windows	Power Windows		
Power Mirrors	Power Mirrors		
RADIO/PHONE/ALARM			
AM/FM Stereo Tape	AM/FM Compact Disc Playr		30
SEAT OPTIONS			
Velour/Cloth Seats	Velour/Cloth Seats		

VALUATION DETAIL (CONTINUED)

97 CHEVROLET K1500 SILVERADO 4WD SHORT

	Typical Vehicle	Loss Vehicle	Adjustments
WHEEL OPTIONS		Bucket Seats	190
PACKAGES	Aluminum/Alloy Wheels Silverado Package	Chrome Wheels Silverado Package Z71 Off-Road Package	140 100
	Other Adjustment (See Valuation Notes):	\$240	\$240
	Value Before Condition Adjustments:		\$24,125
	Total Condition Adjustments (See Condition Adjustment Detail):		\$276
	Total Condition Adjusted Market Value:		\$24,401

VALUATION SUMMARY

97 CHEVROLET K1500 SILVERADO 4WD SHORT BED EXT CAB

	Typical Vehicle	Loss Vehicle	Adjustments
Take Price	\$22,295		\$22,295
Engine	8cyl Gasoline 5.7	8cyl Gasoline 5.7	
Transmission	4 Speed Automatic	4 Speed Automatic	
Odometer	29,130 Mi (typical)	34,000 Mi (actual)	-340
Equipment/Package Adjustment (See Valuation Detail)			1,930
Other Adjustment (See Valuation Notes)			240
ADP/AUTOSOURCE Value Before Condition Adjustments			\$24,125
Total Condition Adjustments (See Condition Adjustment Detail)			276
Total Condition Adjusted Market Value			\$24,401

Applicable Tax: LEASE%Title Fee: 28.50SUB TOTAL: 24,429.50Deductible: MAILEDNET ADJUSTED VALUE: 24,429.50

Salvage/Other: _____

WARNING: The market value displayed
may not reflect the activity detected
by VINSOURCE and/or NICB research.
Please contact client services at
(800)351-3133 for review.

CERTIFICATE OF SERVICE

I, KATHLEEN S. McALLISTER, ESQUIRE, hereby certify that a true and correct copy of the foregoing PRETRIAL MEMORANDUM was mailed by first class mail, postage prepaid, this 30th day of April, 2002 upon the following:

Thomas J. Sweeney, Esquire
Eckert, Seamans, Cherin & Mellott
44th Floor, USX Tower
600 Grant Street
Pittsburgh, PA 15219



Kathleen S. McAllister, Esquire
Attorney for Plaintiff

Arb-5-21-02-100

ECKERT SEAMANS CHERIN & MELLOTT, LLC

May 13, 2002

U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
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By Federal Express

Dwight L. Koerber, Jr., Esq.
110 North Second Street
Clearfield, PA 16380

Boston
Christopher E. Mohney, Esq.
Blakley, Jones & Mohney
90 East Beaver Drive, Box 6
DuBois, PA 15801

Haddonfield, NJ
Harrisburg
Morgantown, WV
Philadelphia
Pittsburgh
Washington, D.C.

David R. Thompson, Esq.
308 Walton Street, Suite 4
Philipsburg, PA 16866

**Re: Allstate Insurance Co. v. General Motors Corporation
No. 00-415-CD, Clearfield County, Pennsylvania**

Dear Panel:

Enclosed please find for your file the Pre-Trial Memorandum in the captioned matter. Also enclosed for your record is a copy of the Rule 1305 Submission which was filed with the Court on May 1.

Should you have any questions, please do not hesitate to call.

Very truly yours,



Melissa L. Lightcap

MLL/tm

Enclosures

c: (w/Pre-Trial Memorandum by Federal Express)
Kathleen S. McAllister, Esq.
David S. Meholic, Court Administrator

RECEIVED

MAY 14 2002

COURT ADMINISTRATOR'S
OFFICE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ALLSTATE INSURANCE COMPANY,
As Subrogee to KEVIN B. TICE,

Plaintiff,

CIVIL DIVISION

No. 00-415-CD

v.

GENERAL MOTORS CORPORATION,

Defendant.

PRE-TRIAL MEMORANDUM
PURSUANT TO L.R. 1306A

Filed on Behalf of Defendant
General Motors Corporation

Counsel of Record for this Party:

Thomas J. Sweeney, Esquire
Pa. I.D. # 3415
Melissa L. Lightcap, Esquire
Pa. I.D. # 84787

ECKERT SEAMANS CHERIN &
MELLOTT, LLC.
Firm I.D. # 075
44th Floor, 600 Grant Street
Pittsburgh, PA 15219

(412) 566-6000

Jury Trial Demanded

RECEIVED
MAY 14 2002
COURT ADMINISTRATOR'S
OFFICE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ALLSTATE INSURANCE COMPANY,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 00-415-CD
)	
v.)	
)	
GENERAL MOTORS CORPORATION,)	
)	
Defendant.)	

GENERAL MOTORS CORPORATION'S PRE-TRIAL MEMORANDUM
PURSUANT TO L.R. 1306A

General Motors, by and through its undersigned counsel, serves the following Pre-Trial Memorandum for the Arbitration scheduled for May 21, 2002 in accordance with Local Rule 1306A and states as follows:

STATEMENT OF THE CASE

On March 19, 1999, Mr. Tice was operating his 1997 Chevrolet K1500 Silverado pick-up truck (VIN 2GCEK19R3V1280872) (hereinafter "truck") on State Route 53 near Phillipsburg, PA when he decided to take a short-cut on an unmarked dirt road. *See* Plaintiff's Statement to Allstate Property-Casualty Claims Service Investigator Jerome Buyny attached as Exhibit C to General Motors' Rule 1305 Submission¹. The weather condition at this time was wet and snowing and became worse as Mr. Tice continued down this path. *See id.* According to Mr. Tice, the road was muddy and the truck became "sandbagged". *See id.* Mr. Tice stated to Investigator Buyny that he could not move the vehicle in either direction. *See id.*

Due to the remote location, Mr. Tice could not summon assistance and left the truck to walk to a neighbor's house, nearly (2) hours away, to request help. *See id.* Mr. Tice eventually arrived at a friend's home and requested help from Jeff Reams. *See id.* As they approached, they observed that the truck was on fire. *See id.*

Mr. Tice contacted the State Police at the Woodland Barracks. *See id.* Troopers Ager and Green responded; however, they could not arrive at the scene due to the poor road and weather conditions. *See id.* Trooper Ager did not complete a report as there were no personal injuries and the truck was not being operated at the time of the fire. *See id.*

Trooper Ager stated to Investigator Buyny that the truck was stuck in the woods. *See id.* Trooper Ager also questioned Mr. Tice's choice to drive on the dirt road given the weather conditions that night. *See id.* Trooper Ager further stated that "it was very possible the vehicle overheated and/or the catalytic converter became so hot that it smoldered the underbrush and eventually engulfed the vehicles in flames."

Id.

On April 6, 1999, Plaintiff filed the instant action for damages allegedly sustained to his truck due to the fire in the amount of \$24,429.50. *See* Complaint at ¶ 7. Simply put, Plaintiff's theory that the fire was caused by a fuel leak from the vapor

¹ General Motors has provided courtesy copies to the Arbitration Panel of its Rule 1305 Submission which was served on Plaintiff's counsel on May 1, 2002 along with copies of its Pre-Trial Memorandum.

canister in the engine compartment is not supported by the physical evidence and facts of this case for the following reasons. *See generally*, Complaint at ¶ 6.

One, Plaintiff's expert is not qualified, as a matter of law, to offer an opinion regarding any alleged defect in the truck. Mr. Orringer is not an engineer nor has he provided any credentials and/or testing that would permit him to offer such an opinion at the arbitration. *See Plaintiff's Expert Report dated March 22, 1999.*

Two, Plaintiff's expert is not qualified, as matter of law, to offer an opinion regarding the cause and origin of this fire. Mr. Orringer has failed to provide any credentials, which would support his ability to offer an opinion regarding the cause and origin of fires. *See id.*

Third, Plaintiff's alleged cause and origin expert misrepresents a NHTSA investigation report (EA98024) in support of his cause and origin of the fire. *See id.* Specifically, Plaintiff's expert states that fuel was allegedly liberated from the vapor canister. *See id.* It is important to note that **this investigation report was never considered or assigned to the truck at issue.** In fact, the investigation, which later became a recall, was assigned to GM full-size vans only. Accordingly, there were no issues or recalls associated with the vapor canister for Plaintiff's truck.

Last, General Motors' expert, Ronald Orlando², opines that Mr. Tice's attempts to free the truck from its stuck position overheated the transmission and exhaust system causing the expulsion of transmission fluid into the engine compartment. *See General Motors' Expert Report dated April 30, 2002.* The truck's Owner Manual provides on

² Mr. Orlando has over twenty-five (25) years experience as an automotive engineer and in the fire service. Mr. Orlando is a certified fire investigator pursuant to NFPA 1033.

page 5-34 under a cautionary note for the category of being stuck in sand, **mud**, ice, or snow, the following:

If you let your tires spin at high speed, they can explode and you or others could be injured. **And, the transmission or other parts of the vehicle can overheat. That could cause an engine compartment fire or other damage**

See Owner's Manual p. 5-34 (emphasis added).

Even though the truck is equipped with an auxiliary transmission fluid cooler, all vehicles require dynamic airflow through the cooler and engine compartment. *See* General Motors' Expert Report dated April 30, 2002. Without the vehicle moving forward, the dynamic airflow was not present. *See id.* This, coupled with Mr. Tice's spinning of the tires, allowed the transmission fluid to overheat and expand. *See id.* In this condition, the fluid is combustible and may be ignited by the overheated engine/transmission.

APPLICABLE CASE LAW

Pennsylvania Product Liability Law

Section 402A of the Restatement (Second) of Torts was adopted as the law of Pennsylvania in *Webb v. Zern*, 422 Pa. 424, 427, 220 A.2d 853, 854 (1966). Section 402A provides that:

- (1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer...is subject to liability for physical harm thereby caused to the ultimate user or consumer, if
 - a. the seller is engaged in the business of selling such a product, and
 - b. it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

Section 402A does not impose absolute liability as a manufacturer is the guarantor of its product, not an insurer. *See Azzarello v. Black Bros. Co.*, 391 A.2d 1020, 1023-24 (Pa. 1978).

Under Section 402A, the plaintiff must establish (1) that the product was defective, (2) that the defect existed when it left the hands of the defendant and (3) that the defect caused the harm. *See Davis v. Berwind Corp.*, 547 Pa. 260 (1997) (emphasis supplied).

Application of Pennsylvania's Economic Loss Rule

Counts I and III of Plaintiff's Complaint are legally insufficient pursuant to the economic loss rule³. It is well-settled in Pennsylvania that purely economic losses, or losses that comprise damages only for the replacement cost of the allegedly defective product, are not recoverable in tort. *See e.g., REM Coal Company, Inc. v. Clark Equipment Company*, 386 Pa. Super. 401, 563 A.2d 128 (1989) (Applying the economic loss rule between commercial entities to bar claims of negligence and strict liability); *New York State Electric & Gas Corp. v. Westinghouse Electric Corp.*, 387 Pa. Super. 537, 549, 564 A.2d 919, 925 (1989) (holding that recovery for the damages pleaded in the **negligence and strict liability counts is barred as a matter of law** because the losses alleged are purely economic in nature and cannot be recovered in negligence or strict liability") (emphasis supplied).

The public policy that spawned tort recovery in the product liability context was a desire to provide protection of the public from unsafe products beyond that provided by

³ General Motors has attached to its Pre-Trial Memorandum copies of the pertinent cases relied upon herein.

contract law. *See REM Coal Co.*, 386 Pa. Super. at 550, 563 A.2d at 926. Tort product liability theories impose responsibility on the supplier of a defective product whenever it causes personal injury or damage to other property because this is deemed to be the best way to allocate the risk of unsafe products and to encourage safer manufacture and design. *See id.*

Where a product malfunctions in a manner that does not cause damage outside of the product itself, Pennsylvania courts have repeatedly found that this public policy is not involved because contract theories such as breach of warranty are specifically aimed at, and perfectly suited to, provide complete redress in cases involving such economic losses. *See id.* All of such losses are based upon, and flow from, the purchaser's loss of the benefit of his bargain and his disappointed expectations as to the product that he purchased. *See id.*

Jones v. General Motors Corporation, 428 Pa. Super. 544, 631 A.2d 665 (1993) is dispositive. In *Jones*, the Pennsylvania Superior Court extended the doctrine first enunciated in *REM Coal Company, Inc.*, and held that the plaintiff-buyers of a truck destroyed when a malfunction caused it to catch fire had no cause of action against the defendant-manufacturer for strict liability or negligence where the only damage alleged was loss of the truck. General Motors respectfully submits that *Jones* is binding upon this Arbitration Panel.

To the extent the Arbitration Panel finds that Plaintiff had "other property" damaged other than the truck itself, then strict liability and negligence theories should only apply to the "other property" and not the truck. In *Erie Insurance Group v. Ford*

Motor Co., Ford Motor Company filed preliminary objections in the nature of demurrer to Plaintiff's negligence and strict liability counts of the Complaint pursuant to the economic loss rule. *Erie Ins. Group v. Ford Motor Co.*, 51 D&C 4th 220, 220 (CCP – Adams County 2001). The trial court sustained Ford's preliminary objections as it related to the vehicle, but overruled the preliminary objections to the extent that personal property contained in the vehicle was damaged. *See id.* at 224. Consequently, the Arbitration Panel should apply the economic loss rule to bar Plaintiff's recovery under tort theories for the truck and only apply tort theories to Plaintiff's other property in the truck at the time of the incident to the extent the Plaintiff proves its losses in that regard.

Plaintiff's Misuse/Abuse of the Truck

Plaintiff cannot prove, as a matter of law, that an alleged defect or nonconformity existed in the truck. Plaintiff's expert is not qualified or competent to testify as to any alleged defect in the vehicle or as to the cause and origin of the fire. Moreover, Plaintiff's expert relies upon a NHTSA investigation report that is not for this truck, but for vans only.

Moreover, ample evidence exists to prove that Plaintiff caused the fire through his own misuse/abuse of the truck. The Owner's Manual clearly provides that a driver should not spin the tires when stuck in mud as the transmission or other parts of the vehicle could overheat and potentially lead to an engine compartment fire. This is precisely what occurred in this case.

Accordingly, Plaintiff's remaining theory, breach of implied warranty of fitness and merchantability must fail as Plaintiff has failed to prove any defect or nonconformity in the truck.

LIST OF WITNESSES

At the time of the Arbitration, General Motors may offer the testimony of the following witnesses:

- 1) Ronald Orlando
30500 Mound Road
Warren, MI 48090-9055
- 2) Kevin B. Tice
RR #1, Box 599
Houtzdale, PA 16651
- 3) General Motors reserves the right to call or examine any witness listed on Plaintiff's List of Witnesses.

EXHIBITS

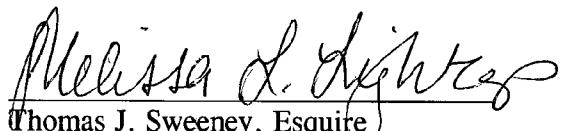
General Motors reserves the right to offer into evidence and use at the Arbitration the following exhibits:

- 1) General Motors Corporation's Expert Report by Ron Orlando with attachments
- 2) General Motors Corporation's Vehicle Information
 - New Vehicle Invoice
 - Warranty History
 - Campaign Status
- 3) Plaintiff's Investigative Report
- 4) Plaintiff's Cause and Origin Report
- 5) Plaintiff's Valuation Report
- 6) NHTSA Investigation Report EA98024

RESERVATION OF RIGHTS

General Motors reserves the right to amend and supplement its Pre-Trial Memorandum at any time up to and including the time of the Arbitration and also reserves the right to offer rebuttal and/or impeachment evidence.

Respectfully submitted,



Thomas J. Sweeney, Esquire
Pa. I.D. # 34615
Melissa L. Lightcap, Esquire
Pa. I.D. # 84787
ECKERT SEAMANS CHERIN & MELLOTT, LLC
44th Floor, 600 Grant Street
Pittsburgh, PA 15219
(412) 566-6000

Attorneys for Defendant, General Motors Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Pre-Trial Memorandum was served in accordance with Local Rule 1306A and on the following via Federal Express, this 13th day of May, 2002.

Kathleen S. McAllister, Esquire
DiBella & Geer, P.C.
322 Boulevard of the Allies
Pittsburgh, PA 15222

A handwritten signature in black ink, appearing to read "Kathleen S. McAllister", is written over a horizontal line.

Superior Court of Pennsylvania.

REM COAL COMPANY, INC.

v.

CLARK EQUIPMENT COMPANY, t/d/b/a
Michigan Loaders, and Anderson Equipment
Company, a Pennsylvania Corporation,
Appellant,

v.

APEX, INC. and Bridgeville Industrial
Supply, Appellee.

01661 PITTS. 1987

Argued Feb. 27, 1989.

Filed Aug. 2, 1989.

Buyer of front-end loader brought action against manufacturer and seller to recover for fire damage to loader. The Court of Common Pleas, Allegheny County, Civil Division, No. GD 84-3188, Musmanno, J., found breach of warranty claim to be barred by statute of limitations and denied summary judgment on negligence and strict liability claims. Permission to appeal was granted. The Superior Court, No. 01661 Pittsburgh 1987, Beck, J., held that negligence and strict liability theories did not apply, where only damage was to product itself.

Reversed and remanded.

West Headnotes

Products Liability  17.1
313Ak17.1 Most Cited Cases
(Formerly 313Ak17)

Negligence and strict liability theories did not apply in action between commercial enterprises, where only damage was to product itself, front-end loader, even if product defect posed risk of other damage or injury or manifested itself in sudden and calamitous occurrence; overruling *Industrial Uniform Rental Co., Inc. v. International Harvester Co.*, 317 Pa.Super. 65, 463 A.2d 1085; *Johnson v. General Motors Corp.*, 349 Pa.Super. 147, 502 A.2d 1317. 13 Pa.C.S.A. §§ 2601, 2607, 2608,

2711-2720.

**128 *402 Arthur R. Gorr, Pittsburgh, for
appellant.

Dennis A. Watson, Pittsburgh, for REM Coal,
appellee.

Before CIRILLO, President Judge, and
CAVANAUGH, BROSKY, McEWEN,
OLSZEWSKI, BECK, TAMILIA, POPOVICH
and JOHNSON, JJ.

BECK, Judge:

This case presents the question of whether purely economic losses are recoverable in a product liability action between commercial enterprises and sounding in negligence and/or strict liability. We hold that they are not.

The relevant facts are not in dispute. Appellee REM Coal Company owned a front-end loader used in its strip mining business. On February 25, 1982 the loader caught fire and was severely damaged. REM instituted this action against Clark Equipment Company, the manufacturer of the loader, and against Anderson Equipment Company, the seller of the loader. Appellant Anderson later joined Apex, Inc., the manufacturer of the fire suppression system on the loader, and Bridgeville Industrial Supply, the seller of the fire suppression system.

REM's complaint pleaded three theories: negligence, strict liability and breach of warranty. All parties concede that the complaint alleged only economic losses, i.e., the loss of the front-end loader itself. No personal injuries or damage to REM Coal's property other than the loader itself were alleged.

At the close of the pleadings, appellants Clark and Anderson moved for summary judgment. On November 17, 1987 the trial court granted summary judgment against REM on the breach of warranty claim, holding that it was barred by the statute of limitations, but denied summary *403

judgment on the negligence and strict liability claims. [FN1] The trial court then certified the denial of summary judgment on the tort claims for immediate appeal, stating that the denial involved a controlling question of **129 law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order would materially advance the ultimate termination of the matter. Permission to appeal was granted. Pa.R.A.P. 1301 et seq.

FN1. REM Coal has not appealed the trial court's order regarding the warranty claim.

Summary judgment is appropriate when two basic requirements are fulfilled. There must be no genuine issue as to any material fact and the moving party must be entitled to judgment as a matter of law. Pa.R.C.P. 1035(b); *Washington Federal Savings & Loan Assn. v. Stein*, 357 Pa.Super. 286, 515 A.2d 980 (1986). Instantly, we need only determine whether the appellants have fulfilled the second requirement. Since all parties concede the material facts, our inquiry is only whether appellants are entitled to judgment as a matter of law.

At issue is the appropriateness of permitting recovery in tort where a product malfunctions because of an alleged defect in the product, causing damage to the product itself and consequential damages in the nature of costs of repair or replacement or lost profits, but the malfunction causes no personal injury and no injury to any other property of the plaintiff. Obviously, the question is not whether a plaintiff in such a case is entitled to a recovery at all, but rather whether a cause of action in tort, as opposed to one sounding solely in contract, is an appropriate vehicle for obtaining such a recovery.

Beginning in 1965 with the decision of the California Supreme Court in *Seely v. White Motor Co.*, 63 Cal.2d 9, 403 P.2d 145, 45 Cal.Rptr. 17 (1965), the national trend has increasingly classified cases of this nature as sounding purely in contract. See, e.g., *Lloyd Wood Coal Co. v. Clark Equipment Co.*, 543 So.2d 671 (Ala.1989); *Superwood Corp. v. Siempelkamp*

Corp., 311 N.W.2d 159 (Minn.1981). *404 The basic rationale employed by courts that have followed this trend is that the goals of tort theories of recovery are not implicated in a product malfunction case involving only economic losses. A contract action, on the other hand, is perfectly suited to providing an adequate remedy for such losses and recognizes the parties' ability to structure their relative liabilities and expectations regarding the product's performance by setting the terms of their contractual bargain.

The public policy that spawned tort recovery in the product liability context was a desire to provide protection of the public from unsafe products beyond that provided by contract law. Tort product liability theories impose responsibility on the supplier of a defective product whenever it causes personal injury or damage to other property because this is deemed to be the best way to allocate the risk of unsafe products and to encourage safer manufacture and design. Where a product malfunctions in a manner that does not cause damage outside of the product itself, many courts have found that this public policy is not involved because contract theories such as breach of warranty are specifically aimed at and perfectly suited to providing complete redress in cases involving such economic losses. All of such losses are based upon and flow from the purchaser's loss of the benefit of his bargain and his disappointed expectations as to the product he purchased. Thus, the harm sought to be redressed is precisely that which a warranty action does redress. See *Seely, supra*; *East River Steamship Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 106 S.Ct. 2295, 90 L.Ed.2d 865 (1986).

This issue has had a lengthy history, not only in decisions of courts across the country, but also in the decisions of this court and of the federal courts sitting in Pennsylvania. We begin with the pertinent decisions by two panels of this court: *Industrial Uniform Rental Co., Inc. v. International Harvester Co.*, 317 Pa.Super. 65, 463 A.2d 1085 (1983), and *Johnson v. General Motors Corp.*, 349 Pa.Super. 147, 502 A.2d 1317 (1986), *allo. denied*, 514 Pa. 639, 523 *405 A.2d 346 (1987). [FN2] In

Industrial Uniform, **130 the purchaser of certain trucks brought a Section 402A strict liability action against the manufacturer of the trucks. The damages alleged were the costs of repairing cracks in the frames of the trucks and the diminution of value in the trucks as a result of these structural deficiencies. The trial court had granted summary judgment for defendant on the ground that these damages were purely economic losses not appropriately recoverable in strict product liability.

FN2. We begin our analysis of existing precedent with decisions of this court because the Supreme Court of Pennsylvania has not decided this question. In fact, we have located only one reference to the issue in Supreme Court precedent and that is found in dicta contained in a footnote to the opinion in *Kassab v. Central Soya*, 432 Pa. 217, 231 n. 7, 246 A.2d 848, 854 n. 7 (1968).

Although *Kassab* involved a breach of warranty action only, the court appended a footnote to its opinion in which it posed a hypothetical situation where a consumer of a gas range was injured when the range exploded. The court hypothesized that the range itself and the consumer's kitchen were also damaged and stated that it saw no reason for excluding recovery of the damage to the range, the product itself, in a strict liability action. This statement of dicta was made at the very inception of strict liability law in Pennsylvania and in the context of a hypothetical situation, highly distinguishable from the instant case. Thus, we do not regard it as in any way indicative of the views of our present Supreme Court on the issue we decide today.

On appeal, this court began with a review of the competing views on this issue. The seminal case representing the view that such damages were not recoverable was *Seely, supra*. The court quoted with approval from the *Seely* court's explanation of the distinction between tort and contract remedies:

The distinction that the law has drawn between tort recovery for physical injuries and warranty recovery for economic loss is not arbitrary and does not rest on the "luck" of one plaintiff in having an accident causing physical injury. The distinction rests, rather, on an understanding of the nature of the responsibility a manufacturer must

undertake in distributing his products. He can appropriately be held liable for physical injuries caused by defects by requiring his goods to match a standard of safety defined in terms of conditions that *406 create unreasonable risks of harm. He cannot be held for the level of performance of his products in the consumer's business unless he agrees that the product was designed to meet the consumer's demands. A consumer should not be charged at the will of the manufacturer with bearing the risk of physical injury when he buys a product on the market. He can, however, be fairly charged with the risk that the product will not match his economic expectations unless the manufacturer agrees that it will. Even in actions for negligence, a manufacturer's liability is limited to damages for physical injuries and there is no recovery for economic loss alone ... The Restatement of Torts similarly limits strict liability to physical harm to person or property.

Industrial Uniform, 317 Pa.Super. at 71, 463 A.2d at 1088 (quoting *Seely*, 63 Cal.2d at 18, 403 P.2d at 151, 45 Cal.Rptr. at 23).

In contrast, the *Industrial Uniform* court noted the divergent view of the Supreme Court of New Jersey expressed in *Santor v. A. & M. Karagheusian, Inc.*, 44 N.J. 52, 207 A.2d 305 (1965), where the sole alleged damages were economic losses, i.e., a decrease in the value of defective carpeting purchased by plaintiff from the defendant manufacturer. In *Santor*, the court held that strict liability recovery was permissible even in a case involving purely economic loss because the manufacturer must bear all risks associated with placing defective products on the market, including the risk that the product itself does not perform up to the purchaser's expectations. *Id.*

Having set forth these basic and diverging views, the *Industrial Uniform* court then looked to the decision of the Court of Appeals for the Third Circuit in *Pennsylvania Glass Sand Corp. v. Caterpillar Tractor Co.*, 652 F.2d 1165 (3d Cir.1981), in which the Third Circuit had predicted Pennsylvania law on this issue. In *Pennsylvania Glass Sand*, the Third Circuit

opined that the Pennsylvania Supreme Court, if confronted with this issue, would adopt an intermediary position which generally banned recovery for *407 economic loss in tort, but which allowed such recovery where the **131 product posed a risk of injury to the person or other property of the plaintiff. The court proposed a case-by-case analysis focusing on the nature of the defect, the type of risk posed by the defect, and the manner in which the damages occurred. The rationale underlying this view was the Third Circuit's perception of a relevant distinction between *pure* economic loss, i.e. damages resulting from impaired quality of the product which are properly redressed in a warranty action, and economic loss occasioned by dangerously defective products. The Third Circuit opined that the latter is most appropriately addressed by tort product liability theories. 652 F.2d at 1173-74. Since the defect alleged in *Pennsylvania Glass Sand* was the lack of a fire suppression system on a front-end loader, and the damage to the loader occurred as a result of a sudden and calamitous fire that spread over the loader, the Third Circuit held that the alleged defect was a dangerous one and that plaintiff did have a cause of action in tort.

After consideration of the three views summarized above, the *Industrial Uniform* court formulated a rule that closely parallels the *Pennsylvania Glass Sand* position, as follows: In an action between commercial enterprises, where defective design, manufacture and sale of a product is alleged, where there is nothing in the record to indicate that the defect is dangerous to persons or to property, and where the purported defect results in progressive deterioration of the product itself, the buyer's cause of action for its economic losses against the seller is in breach of warranty under the U.C.C.

Industrial Uniform, 317 Pa.Super. at 79-80, 463 A.2d at 1093. Applying this rule to the facts under review, the *Industrial Uniform* court found that plaintiff had not stated a cause of action in tort because plaintiff alleged only a non-dangerous defect and a gradual deterioration of the product not involving any calamitous event. *Id.*

*408 The decision in *Industrial Uniform* was shortly followed by *Johnson v. General Motors Corp.*, 349 Pa.Super. 147, 502 A.2d 1317 (1986), *allo. denied*, 514 Pa. 639, 523 A.2d 346 (1987). In *Johnson*, the plaintiff class alleged that certain cars manufactured by defendant had defective transmissions that wore out prematurely. Plaintiffs sought recovery in both breach of warranty and negligence. The damages alleged were the costs of repairing the transmissions, as well as damages for plaintiffs' alleged exposure to a risk of personal danger and damage to other property. The *Johnson* court determined that these allegations did not state a cause of action in tort under the *Industrial Uniform* standard because plaintiffs had alleged only that the transmissions prematurely wore out. They did not allege any unexpected occurrence resulting from the defect. The court found the allegations of a risk of such a dangerous occurrence to be speculative, stating that "[t]hose cases where an unexpected occurrence did occur, thus creating a real, not a risk of, danger to person or to property, are distinguishable." *Id.* 349 Pa.Super. at 159, 502 A.2d at 1323.

The basic principles set forth in *Industrial Uniform* and *Johnson* have been consistently applied by Pennsylvania courts. For example, in *Lupinski v. Heritage Homes, Ltd.*, 369 Pa.Super. 488, 535 A.2d 656 (1988), a homeowner sought recovery in strict liability for the decrease in market value of the home due to an infestation of insects in the wood used to build the home. The court held that recovery of such purely economic losses in strict liability was barred under *Industrial Uniform* and *Johnson*. Even though the warranty provisions of the Uniform Commercial Code did not apply, the court nevertheless found the principles of *Industrial Uniform* and *Johnson* applicable because the homeowner's proper remedy was in the common law of contract. *Id.* at 492, 535 A.2d at 658.

Were we to apply the law as set forth in *Industrial Uniform*, *Johnson* and *Pennsylvania Glass Sand*, we would likely conclude that the trial court here was correct in finding that

appellee has stated a cause of action in tort. *409 The occurrence giving **132 rise to appellee's damages is strikingly similar to the occurrence involved in *Pennsylvania Glass Sand*—a sudden fire in a frontend loader, allegedly resulting from dangerous defects in the loader and/or its fire suppression system, which ultimately caused extensive damage to the loader. Clearly, under the rationale of those cases, this type of event and defect would fall within the category of cases where a tort action would be appropriate.

We will not, however, cling to the standard of *Industrial Uniform*, *Johnson* and *Pennsylvania Glass Sand*. We find that they present an unworkable mechanism for dealing with this issue. Instead, we adopt the standard unanimously adopted by the Supreme Court in *East River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 106 S.Ct. 2295, 90 L.Ed.2d 865 (1986), under which recovery in tort is barred in product liability actions between commercial enterprises where the only damage alleged is to the product itself, whether or not the defect posed a risk of other damage or injury or manifested itself in a sudden and calamitous occurrence. [FN3]

FN3. Although *East River* was an admiralty case which established principles of federal maritime law not binding on us, we nevertheless may and do find its analysis and conclusion persuasive.

East River was an admiralty action arising out of alleged defects in the pressure turbines in a number of supertankers manufactured by defendant. Plaintiffs (charterers of the vessels) alleged that these defects had caused damage to the turbines themselves and sought recovery for the cost of repairing the turbines and loss of income. The trial court granted summary judgment to defendant on the ground that the losses alleged were not recoverable in tort and the court of appeals affirmed. *Id.* at 859-62, 106 S.Ct. at 2296-98.

In analyzing whether economic losses were recoverable in a tort product liability action, the Supreme Court looked to the three "land-based" approaches to the issue represented by *Seely*, *Santor* and *Pennsylvania Glass Sand*. In a

unanimous decision, the Court rejected both the *Santor* view, which allows recovery in tort for all nature of economic *410 losses, and the *Pennsylvania Glass Sand* view, wherein recovery is dependent on the nature of the defect and the risk it poses. The Court rejected the *Santor* view because of its concern for keeping "product liability and contract in separate spheres" and for maintaining "a realistic limitation on damages." *Id.* at 871, 106 S.Ct. at 2302. The Court also rejected the *Pennsylvania Glass Sand* view because it found that resting determinations of recoverability on the degree of risk posed by a defective product established too indeterminate a standard for manufacturers to follow in structuring their business behavior. *Id.* at 870, 106 S.Ct. at 2301. The Court further opined:

Nor do we find persuasive a distinction that rests on the manner in which the product is injured. We realize that damage may be qualitative, occurring through gradual deterioration or internal breakage. Or it may be calamitous. But either way, since by definition no person or other property is damaged, the resulting loss is purely economic. Even when the harm to the product itself occurs through an abrupt, accident-like event, the resulting loss due to repair costs, decreased value, and lost profits is essentially the failure of the purchaser to receive the benefit of his bargain—traditionally, the core concern of contract law.

Id. (citations omitted).

Thus, the *East River* Court was persuaded that analyzing cases involving injury to the product alone solely under the law of contract was appropriate. The Court's reasoning basically paralleled that of other courts that have adopted this view. First, tort law's concern for the protection of the public is greatly reduced in such circumstances. Since consumers of the product can insure against the loss of the product and its use, there is no need to provide them with the special protection of tort remedies. Second, damage to the product is "most naturally understood as a warranty claim." *Id.* at 872, 106 S.Ct. at

2302. Warranties aim at maintaining product value and quality, which is all a consumer loses when the product is defective in a **133 manner that results only in economic losses. Finally, warranty law is *411 suited to economic loss cases because in such cases, the parties have the opportunity to have set the terms of their agreement regarding product value and quality in advance. The manufacturer may provide limited warranties and reduce the price, or give full warranties at a higher cost. The customer has the ability to negotiate over the terms of the bargain. If the product does not perform according to the agreement, the consumer is made whole by contract damages as limited by the terms of the agreement. This limitation of liability is an entirely appropriate brake on the manufacturer's liability in a case involving only the loss of the bargained for product. *Id.* at 873-74, 106 S.Ct. at 2303-04.

We are in complete accord with this reasoning. Pennsylvania's breach of warranty law supplies a suitable framework for regulating and enforcing the expectations and obligations of the parties as to product performance. It provides a disappointed purchaser a complete remedy for loss of the product itself and of its use within the limits of the parties' contractual understandings. See Uniform Commercial Code, 13 Pa.Cons.Stat.Ann. §§ 2601, 2607, 2608, 2711-2720 (1984). To impose tort liability in addition would certainly erode the important distinctions between tort and contractual theories, including their differing objectives.

We also concur in the Supreme Court's rejection of the *Industrial Uniform, Johnson and Pennsylvania Glass Sand* standard. The standard adopted in those cases focusses attention on the nature of the risk posed by a product, despite the fact that in every case involving injury to the product alone, the risk has never materialized and the only actual harm is the type of harm that contract law was designed to redress. The proper focus is not on the type of risk, but on the actual harm for which plaintiff seeks recovery. Moreover, allowing a cause of action in tort where the

nature of the risk posed by the product is the determinative factor invites and indeed forces courts to enter into a difficult line-drawing process that can only yield inconsistent results. When precisely could it be concluded that a defect posed an unreasonable risk where the *412 risk never materialized? How much need a plaintiff plead to establish a sufficiently non-speculative risk to avoid a demurrer? Must plaintiff establish that an accident-like event occurred in order to recover, or would the imminence of such an event, narrowly avoided, be sufficient?

We note that the Third Circuit has also re-analyzed the *Pennsylvania Glass Sand* approach in light of the *East River* decision. It did so in a case governed by Pennsylvania law and involving facts remarkably similar to those presented by the instant case. In *Aloe Coal Co. v. Clark Equipment Co.*, 816 F.2d 110 (3d Cir.), cert. denied, 484 U.S. 853, 108 S.Ct. 156, 98 L.Ed.2d 111 (1987), the purchaser of the same type of front-end loader involved here, manufactured by the same defendant, sued the manufacturer in breach of warranty, negligence and strict liability when the loader unexpectedly caught fire and was severely damaged. No other property was damaged, nor did personal injury result from the incident. The Third Circuit reviewed *East River* and concluded "that the United States Supreme Court's analysis is so persuasive that it will be followed by Pennsylvania courts." *Id.* at 117. Thus, the Third Circuit rejected the intermediary position of *Pennsylvania Glass Sand* in favor of the bright line test enunciated in *East River*. In applying *East River* to the facts before it, the court denied recovery in tort despite the calamitous nature of the event and potentially dangerous nature of the alleged defect. See also *King v. Hilton-Davis*, 855 F.2d 1047 (3d Cir.1988), cert. denied, 488 U.S. 1030, 109 S.Ct. 839, 102 L.Ed.2d 971 (1989) (In case governed by Pennsylvania law, *East River* analysis applies to tort product liability suit by purchaser of product against manufacturer of component part of product; where only the product purchased is damaged, there is no recovery in tort product liability); *Lloyd Wood Co. v. Clark Equipment Co.*, 543 So.2d 671 (Ala.1989) (Supreme Court of

Alabama adopts *East River*).

**134 Since we too prefer the clearer standard of *East River*, we hold that negligence and strict liability theories do not apply in an action between commercial enterprises involving a product that malfunctions where the only resulting damage *413 is to the product itself. [FN4] To the extent that *Industrial Uniform* and *Johnson* suggest a contrary rule, they are overruled. [FN5]

FN4. Since the case *sub judice* involves a dispute between commercial enterprises, as did *East River* and *Aloe Coal*, we need not and do not decide any questions regarding disputes between non-commercial parties.

FN5. We also note that in two prior Superior Court opinions, *Cornell Drilling Co. v. Ford Motor Co.*, 241 Pa.Super. 129, 359 A.2d 822 (1976), and *MacDougall v. Ford Motor Co.*, 214 Pa.Super. 384, 257 A.2d 676 (1969), the court made evidentiary rulings which permitted Section 402A actions to proceed in cases where the only loss alleged appears to have been to the product itself. Although neither opinion discusses the issue in the instant case, to the extent those opinions impliedly suggest a rule contrary to the one announced herein, they are disapproved.

Applying this rule to the case *sub judice*, we conclude that REM Coal has not stated causes of action in negligence or strict liability. There are no allegations of damage outside of the loss of the product itself. REM Coal merely seeks to recover the loss of the benefit of its bargain. Thus, we reverse the trial court's denial of appellants' motions for summary judgment and remand to the trial court for entry of judgment for appellants on REM Coal's tort causes of action.

Reversed and remanded. Jurisdiction relinquished.

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Superior Court of Pennsylvania.

Thomas JONES and Emma Jones, Appellants,
v.
GENERAL MOTORS CORPORATION.

Argued May 12, 1993.
Filed Sept. 20, 1993.

Buyers of truck brought suit against manufacturer, seeking damages for losses sustained when malfunction in truck caused it to catch fire. The Court of Common Pleas of Columbia County, Civil Division, No. 1810 of 1991, Keller, J., granted summary judgment in favor of manufacturer, and buyers appealed. The Superior Court, No. 03952 Philadelphia 1992, Hoffman, J., held that absent allegations of damage outside loss of the truck, buyers failed to state cause of action in strict liability.

Affirmed.

West Headnotes

Products Liability  17.1
313Ak17.1 Most Cited Cases

Buyers of truck destroyed when malfunction caused it to catch fire had no cause of action against manufacturer for strict liability where only damage alleged was loss of the truck.

**665 *545 George F. Douglas, Jr., Carlisle, for appellants.

Maureen A. Kane, Philadelphia, for appellee.

Before POPOVICH, HOFFMAN and HESTER, JJ.

HOFFMAN, Judge.

This is an appeal from an order granting summary judgment in favor of appellee, General Motors Corporation. Appellants, Thomas Jones and Emma Jones, present the following question for our review:

Can there be a product liability cause of action under Section 402A of the Restatement

of Torts, 2d, for fire damage to the vehicle itself, allegedly caused by a defect in the design or manufacture of the said vehicle?

Appellants' Brief at 2. For the reasons set forth below, we affirm.

Preliminarily, we point out that a motion for summary judgment is properly granted only where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Pa.R.C.P. 1035(b). In reviewing a motion for summary judgment, the trial court "must examine the record in the light most favorable to the non-moving party." *Laventhal & Horwath v. Dependable Ins. Associates, Inc.*, 396 Pa.Super. 553, 558, 579 A.2d 388, 390 (1990), *appeal denied*, 527 Pa. 648, 593 A.2d 420 (1991).

Applying this standard of review, the relevant facts are as follows. In 1986, appellants purchased a new Chevrolet pick-up truck which was manufactured in part, sold and/or supplied *546 by appellee. On the morning of June 22, 1991, Thomas Jones drove his pick-up truck from his home in Wapwallopen, Luzerne County, to the parking lot of the Ames Department Store located in Columbia County. While Thomas Jones was inside the department store, a malfunction in the truck caused the vehicle to catch fire. The fire resulted in the destruction of appellants' pickup truck.

On December 11, 1991, appellants filed a complaint against appellee seeking \$7,976.95 in damages for the loss of their pick-up truck. [FN1] On October 1, 1992, appellee filed a motion for summary judgment alleging that appellants failed to state a claim upon which relief could be granted. The trial court subsequently granted appellee's motion for summary judgment in its **666 November 13, 1992 order. This timely appeal followed.

FN1. Appellants eventually reduced their claim to

\$6,018.95 as a result of the \$1,958.00 they received for the remains of the pickup truck.

Appellants contend that as they sufficiently stated a cause of action for relief in strict liability, the trial court erred in granting summary judgment. We disagree.

In *REM Coal Co., Inc. v. Clark Equipment Co.*, 386 Pa.Super. 401, 563 A.2d 128 (1989), this Court held that negligence and strict liability theories do not apply to disputes involving a product that malfunctions where the only resulting damage is to the product itself. *Id.* at 412-13, 563 A.2d at 134. In the instant action, appellants have made no allegations of damage outside of the loss of the truck itself. Appellants properly point out, however, that the *REM Coal* decision was limited to disputes between commercial enterprises. Here, the dispute is between a commercial enterprise, appellee, and two individuals, appellants. Nonetheless, we find that the rationale behind *REM Coal* is equally applicable to disputes involving claims brought by individuals.

We first note that in limiting its holding to disputes between commercial enterprises, the *REM Coal* Court did not conclude that its analysis was inapplicable to disputes involving non-commercial parties. Rather, the Court was simply restricting *547 itself to the question before it. *See id.* at 413, 563 A.2d at 134 n. 4 ("Since the case *sub judice* involves a dispute between commercial enterprises, we need not decide any questions regarding disputes between non-commercial parties.").

In reaching its decision that damage to a manufacturer's product alone is not sufficient to state a cause of action in negligence or strict liability, the *REM Coal* Court provided the following rationale:

Pennsylvania's breach of warranty law supplies a suitable framework for regulating and enforcing the expectations and obligations of the parties as to product enforcement. It provides a disappointed purchaser a complete remedy for loss of the product itself and of its use within the limits of the parties' contractual understandings. To impose tort liability in addition would

certainly erode the important distinctions between tort and contractual theories including their differing objectives.

REM Coal at 411, 563 A.2d at 133 (citation omitted).

The same concerns are present in the instant case. Regardless of whether a consumer is a commercial entity or an individual, a manufacturer's warranty as to the quality of its product is a bargained for condition of sale, the effect of which must not be undermined. If a consumer were entitled to bring an action under both contract and tort law where the only damage alleged is to the product, any limitation of the manufacturer's liability pursuant to the warranty would have little or no effect. As the *REM Coal* Court stated, such a deleterious result can easily be avoided by limiting consumers in those situations to the remedies available under contract law.

As appellants have made no allegations of damage outside of the loss of the truck, they have failed to state a cause of action in strict liability. Accordingly, we affirm the trial court's order.

Order affirmed.

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LEXSEE 2001 Pa. D. & C. LEXIS 23

Erie Insurance Group v. Ford Motor Co.

no. 00-S-968

COMMON PLEAS COURT OF ADAMS COUNTY, PENNSYLVANIA

51 Pa. D. & C.4th 220; 2001 Pa. D. & C. LEXIS 23

March 21, 2001, Decided

DISPOSITION:

[**1] Defendant's preliminary objections sustained.

HEADNOTES:

Products liability — Defenses — Economic loss doctrine — Damage to personal property

In a products liability action brought against the manufacturer of plaintiff's car to recover for a fire that destroyed the car, the economic loss doctrine did not bar plaintiff from recovering economic damages for personal property that was destroyed in the fire. Preliminary objections sustained and overruled in part.

Plaintiff, acting as subrogee on behalf of its insured, filed a products liability action against defendant Ford Motor Co., the manufacturer of the insured's 1997 Mercury Mystique, following a fire which destroyed the vehicle and personal property located inside the vehicle. Defendant filed preliminary objections to plaintiff's claims for negligence and strict liability, asserting that the economic loss doctrine did not allow plaintiff to recover purely economic damages.

Noting the absence of Pennsylvania precedent on the issue, the court determined that "Section 402A [of the Restatement (Second) of Torts] ostensibly authorizes recovery for damages other than to the product in question [and] it is clear that damage to property in the plaintiff's subrogor's automobile does not involve the type of harm that contract law was designed to redress." Accordingly, defendant's preliminary objections were sustained as to the Mercury Mystique, but were denied as to the property inside the vehicle.

COUNSEL:

John Popilock, for plaintiff.

Nancy Winschel and Richard J. Kabbert, for defendant.

JUDGES:

SPICER, P.J.

OPINIONBY:

SPICER

OPINION:

[*220] Plaintiff, acting as subrogee on behalf of its insured, filed a complaint [*221] September 29, 2000 against defendant manufacturer to recover from a fire that destroyed insured's 1997 Mercury Mystique and personal property that was in the vehicle. Plaintiff raises claims of breach of warranty, negligence and strict liability n1 alleging the fire was the result of faulty wiring within the vehicle.

n1 Pennsylvania Supreme Court adopted section 402A of the Restatement in *Webb v. Zern*, 422 Pa. 424, 220 A.2d 853 (1966).

Section 402A of the Restatement (Second) of Torts, provides in relevant part:

"(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, *or his property*, if . . ." Section 402A of the Restatement (Second) of Torts (1965). (emphasis added)

[**2]

Defendant has filed preliminary objections in the nature of demurrers as to counts sounding in negligence and strict liability. Defendant asks the court to dismiss tort claims with prejudice because of the economic loss doctrine. It argues that plaintiff is not entitled to recover purely economic damages arising out of the fire and implies that plaintiff has alleged damages to personal property located within the car only to avoid the doctrine.

A court should not sustain a preliminary objection in the nature of a demurrer unless it is clear that the law will not permit recovery. *Small v. Horn*, 554 Pa. 600, 722 A.2d 664 (1998).



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Although the Superior Court has upheld dismissal of a complaint in a factually similar case, *Jones v. General Motors Corp.*, 428 Pa. Super. 544, 631 A.2d 665 (1993), the case did not involve property other than the motor vehicle. Our Supreme Court has yet to rule on [*222] the doctrine. n2 The Superior Court's first pronouncement is found in *REM Coal Co. Inc. v. Clark Equipment Co.*, n3 386 Pa. Super. 401, 409, 563 A.2d 128, 132 (1989), where the court reviewed the history of the doctrine and adopted the [*223] standard expressed by the U.S. Supreme Court in *East River S.S. Corp. v. Transamerica Delaval Inc.*, n4 476 U.S. 858, 106 S. Ct. 2295, 90 L. Ed. 2d 865 (1986): "recovery in tort is barred in product liability actions between commercial enterprises n5 where the only damage alleged is to the product itself, n6 whether or not [*223] the defect posed a risk of other damage or injury or manifested itself in a sudden and calamitous occurrence."

n2 The doctrine applies to causes sounding in both negligence and strict liability. See also, 4 Standard Pennsylvania Practice 2d § 23.6 (p. 323).

n3 This case involved an action between a strip mining business and the manufacturer and seller of the front end loader that caught on fire, resulting in damage to the loader itself.

n4 An admiralty case also involving two commercial enterprises. Plaintiff and defendant contracted for construction of four supertankers. Plaintiff brought products liability action after discovering turbines were defective, seeking the cost of repair, and income lost while tankers were out of service.

n5 The *REM* court noted that the dispute was between two commercial enterprises, as was the case in *East River*, and declined to answer any questions regarding disputes between noncommercial parties. However, our Superior Court later found that the rationale behind *REM* was equally applicable to disputes involving claims brought by individuals. *Jones v. General Motors Corp., supra.*

[**4]

n6 More recently, the U.S. Supreme Court has clarified what constitutes "the product itself" in *Saratoga Fishing Co. v. J.M. Martinac & Co.*, 520 U.S. 875, 117 S. Ct. 1783, 138 L. Ed. 2d 76 (1997). In this case, an individual purchased a boat then added additional equipment to it. The boat was then sold and subsequently sank as the result of a fire in the engine room caused by a defectively

designed hydraulic system. The Supreme Court held that plaintiff could recover for the physical damage caused to the equipment as it constituted "other property." Added equipment that played no causal role in the accident that damaged the product is recoverable in tort.

Justice Blackman writing for the Supreme Court explained:

"The distinction that the law has drawn between tort recovery for physical injuries and warranty recovery for economic loss is not arbitrary and does not rest on the 'luck' of one plaintiff in having an accident causing physical injury. The distinction rests, rather, on an understanding of the nature of the responsibility a manufacturer must undertake in distributing [*225] his products." Citing *Seely v. White Motor Company*, 63 Cal.2d at 18, 403 P.2d at 151.

"Where injury is only to the product itself the reasons for imposing a duty in tort are weak and those for leaving a party to its contractual remedy are strong." *East River*, 476 U.S. at 871, L. Ed. 2d at 877. Offering further explanation, the Superior Court has said:

"[In the *East River* case, the Supreme Court] emphasized that where an allegedly defective product causes damage only to itself, and other consequential damages resulting from the loss of the use of the product, the law of contract is the proper arena for redressing the harm because in such a case, the damages alleged relate specifically to product quality and value as to which the parties have had the opportunity to negotiate and contract in advance. They have allocated the risks of possible types of losses, and agreed on the level of quality that will be given for the price demanded. When the product fails to conform and only economic losses result, the parties' recovery one against the other for economic losses should be limited to an action on that contract [*224] and no additional recovery [*226] in negligence or strict liability is permitted." *New York State Electric & Gas Corp. v. Westinghouse Electric Corp.*, 387 Pa. Super. 537, 550-51, 564 A.2d 919, 925-26 (1989).

However, where other property is injured, such damage may be considered so akin to personal injury that the two are treated alike. *East River*, citing *Seely* at 152.

There is no Pennsylvania appellate authority on point. While the *REM* and *Jones* cases, *supra*, adopted the U.S. Supreme Court's analysis as to damages to the chattel alone, neither case involved additional property.

Section 402A ostensibly authorizes recovery for damages other than to the product in question. It is clear that damage to property in the plaintiff's subrogor's au-



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tomobile does not involve the type of harm that contract law was designed to redress. It is equally clear that section 402A is designed to reduce to irrelevancy considerations of warranty and contract law. See comment to the section on pages 355 and 356. Thus, commercial law and tort law are designed to provide distinct remedies. There is no reason to disallow recovery when unequivocally stated policy reasons expressed in *REM* and *Jones, supra*, [**7] are inapplicable. There is equally no rea-

son for abrogating those policies merely because some other property was damaged.

Accordingly, the attached order is entered.

ORDER

And now, March 21, 2001, defendant's preliminary objections are sustained as to the 1997 Mercury Mystique, but denied as to the other property. Defendant shall have 20 days in which to file an answer.